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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for February 28, 2006

Designating Michael M. Hawkins, M.D. of Austin as Presiding Officer of the Texas Council on Cardiovascular Disease and Stroke, pursuant to HB 2344, 79th Legislature, Regular Session, for a term at the pleasure of the Governor.

Appointments for March 8, 2006

Appointed to the Texas Council on Cardiovascular Disease and Stroke, pursuant to HB 2344, 79th Legislature, Regular Session, for a term to expire February 1, 2007, Sheila Tello of Corpus Christi (replacing Michael Vintges who resigned from existing council).

Appointed to the Texas Council on Cardiovascular Disease and Stroke, pursuant to HB 2344, 79th Legislature, Regular Session, for a term to expire February 1, 2009, Carolyn Hutchinson of Harlingen (replacing Suzanne Lozano who resigned from existing council).

Appointments for March 13, 2006

Appointed as Judge of the 72nd Judicial District Court, Lubbock/Crosby Counties, for a term until the next General Election and until his successor shall be duly elected and qualified, Ruben Gonzales Reyes of Lubbock. Mr. Reyes is replacing Judge J. Blair Cherry, Jr. who resigned.

Appointed to the Economic Development Corporation for a term at the pleasure of the Governor, Kerry Hall of Austin.

Appointed to the Crime Stoppers Advisory Council for a term to expire September 1, 2008, Tina Alexander Sellers of Lufkin (Ms. Sellers is being reappointed).

Appointed to the Crime Stoppers Advisory Council for a term to expire September 1, 2008, Nelda L. Garcia of Ben Bolt (replacing Juan Jorge of Tomball whose term expired).

Appointed to the Crime Stoppers Advisory Council for a term to expire September 1, 2009, Dorothy Jon Flores Spinks of Marble Falls (Ms. Spinks is being reappointed).

Appointed to the Crime Stoppers Advisory Council for a term to expire September 1, 2009, Brian Thomas of Amarillo (Mr. Thomas is being reappointed).

Appointed to the One-Call Board for a term to expire August 31, 2006, Leopoldo P. Cervantes of San Antonio (replacing Ralph Alonzo who resigned).

Appointed to the One-Call Board for a term to expire August 31, 2008, John Dao of Houston (replacing Jack Blaz of Dallas whose term expired).

Appointed to the One-Call Board for a term to expire August 31, 2008, Virginio Ortega of Lubbock (Mr. Ortega is being reappointed).

Appointed to the One-Call Board for a term to expire August 31, 2008, Steven R. Landon of Colleyville (Mr. Landon is being reappointed).

Appointed to the One-Call Board for a term to expire August 31, 2008, Deborah Ellison Farris of Dallas (Ms. Farris is being reappointed).

Appointed to the State Board of Veterinarian Medical Examiners for a term to expire August 22, 2011, David Wayne Heflin, D.V.M. of Mission (replacing Dee Ann Pederson of Austin whose term expired).

Appointed to the State Board of Veterinarian Medical Examiners for a term to expire August 22, 2011, Janie Allen Carpenter, D.V.M. of Garland (replacing Gary Brantley of Richardson whose term expired).

Appointed to the State Board of Veterinarian Medical Examiners for a term to expire August 22, 2011, Cynthia S. Diaz of San Antonio (replacing Mario Escobar of Crystal City whose term expired).

Rick Perry, Governor

TRD-200601679



Appointments

Appointments for March 21, 2006

Appointed to the Governing Board of the Texas School for the Deaf for a term to expire January 31, 2011, Connie F. Sefcik-Kennedy of Austin (replacing Lesa Von Thomas of Corpus Christi whose term expired).

Appointed to the State Health Services Council for a term to expire February 1, 2007, Jacinto P. Juarez, Ph.D. of Laredo (pursuant to HB 2292, 78th Legislature, Regular Session).

Appointed to the State Health Services Council for a term to expire February 1, 2011, Graciela A. Cigarroa of San Antonio (pursuant to HB 2292, 78th Legislature, Regular Session).

Appointed to the State Health Services Council for a term to expire February 1, 2011, James G. Springfield of Harlingen (Mr. Springfield is being reappointed).

Appointed to the State Health Services Council for a term to expire February 1, 2011, Jaime A. Davidson, M.D. of Dallas (Dr. Davidson is being reappointed).

Appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2011, Karol A. Schreiner of Hunt (replacing Calvin Weinheimer of Kerrville whose term expired).

Appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2011, Mike Boyd McKenzie of Kerrville (replacing Jerry Ahrens of Kerrville whose term expired).

Appointed to the Upper Guadalupe River Authority for a term to expire February 1, 2011, Lana M. Edwards of Hunt (replacing Janet Robinson of Kerrville whose term expired).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2007, Brian Lawrence Padden of Austin (Mr. Padden is being reappointed).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2007, Sandra A. Cararas of McAllen (Ms. Cararas is being reappointed).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2007, Kosse Kyle Maykus of Southlake (Mr. Maykus is being reappointed).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2007, A. John Yoggerst of San Antonio (replacing James Spence of Austin whose term expired).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2007, Sockalingam (Sam) Kannappan of Houston (replacing Therese Baer of Austin whose term expired).

Appointed to the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2007, Sarah E. Kirksey of Beaumont (replacing Cynthia Williams of Odessa whose term expired).

Appointed to the University of North Texas Board of Regents for a term to expire May 22, 2011, Claude Daniel Smith, Jr. of Plane (Mr. Smith is being reappointed).

Appointed to the University of North Texas Board of Regents for a term to expire May 22, 2011, Alfredo Silva of San Antonio (replacing Tom Lazo of Dallas whose term expired).

Appointed to the University of North Texas Board of Regents for a term to expire May 22, 2011, Charles D. Mitchell, M.D. of Dallas (replacing Charles Beatty of Dallas whose term expired).

Rick Perry, Governor

TRD-200601749



Executive Order

RP 56

Relating to renewal of disaster recovery issues.

WHEREAS, Hurricane Katrina, a disaster in sister states, created an emergency disaster and emergency conditions for the people in the State of Texas beginning September 1, 2005; and

WHEREAS, Hurricane Rita struck the State of Texas on September 24, 2005, causing massive destruction in South and East Texas; and

WHEREAS, Texas Railroad Commissioner Michael Williams, in his role as leading the state's long-term relief efforts in regards to Hurricanes Katrina and Rita, requested that I issue an executive order to further aid in the disaster recovery effort in order to continue to address the emergency conditions created by the disasters; and

WHEREAS, I did issue Executive Order No. 54 on January 10, 2006 and Executive Order No. 55 on February 9, 2006, relating to disaster recovery; and

WHEREAS, I do hereby certify that Hurricanes Katrina and Rita continue to create an emergency disaster and emergency conditions for the people in the State of Texas; and

WHEREAS, pursuant to the Texas Disaster Act of 1975, the governor is responsible for meeting the dangers to the state and people presented by disasters; and

WHEREAS, under Chapter 418 of the Texas Government Code, the governor is expressly authorized to issue executive orders declaring a state of disaster;

NOW THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew

Executive Order No. 55 and declare a state of disaster for purposes of disaster recovery and response and direct that all necessary measures, both public and private as authorized under Section 418.015 of the Texas Government Code, be implemented to meet the disaster.

As provided in Section 418.016 of the Texas Government Code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

FURTHER, I hereby order that all actions taken pursuant to this executive order shall be preauthorized by the State Director of Homeland Security.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until it expires by statute or it is modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 10th day of March, 2006.

Rick Perry, Governor

TRD-200601750



Executive Order

RP 57

Relating to implementing recommendations from the Governor's Task Force on Evacuation, Transportation, and Logistics.

WHEREAS, the Governor's Task Force on Evacuation, Transportation and Logistics was appointed to document the lessons learned from the Hurricane Rita evacuation, identify key challenges of urban area mass evacuations in Texas, and recommend improvements to state, regional, and local evacuation planning and execution; and

WHEREAS, the Task Force conducted public hearings across Texas to gather and document input from stakeholders to develop recommendations; and

WHEREAS, on February 14, 2006, the Task Force issued a final report containing recommendations to improve the State's ability to plan and execute mass evacuations in the five key areas: command, control, and communications; evacuation of people with special needs; fuel availability; traffic flow; and public awareness;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

1. *Direction and oversight.* The State Director of Homeland Security shall ensure this executive order is carried out in a manner consistent with the report and recommendations of the Task Force.

2. *Command, control, and communications.* To improve command, control, and communications during mass evacuations, the Emergency Management Directors (County Judges and Mayors) within each of the state's 24 Councils of Government shall establish a Regional Unified Command Structure (RUCS), and appoint a single Incident Commander for the Regional Unified Command Structure. Each Regional Unified Command Structure will be responsible for preparing for and responding to catastrophic events within the region. Each Incident Commander will be the operational commander within the region during a disaster response, including a mass evacuation. An Incident Commander will serve a term of not less than one year. The Governor's Division of Emergency Management shall oversee the implementation of the Regional Unified Command Structure throughout the state. Each Regional Unified Command Structure shall be established no later than April 18, 2006, and the composition of regional unified command, to

include the name and qualifications of the Incident Commander, shall be provided to the Governor's Division of Emergency Management no later than April 20, 2006.

The Texas Department of Public Safety shall provide to each Regional Unified Command Structure a senior-level commissioned officer with appropriate staff to represent the State as each Regional Unified Command Structure prepares for and responds to a catastrophic event within the region.

The Texas Department of Public Safety shall assume responsibility for command, control, and communications, as well as other operational tasks as directed by the Governor, during evacuations and other disaster response operations that involve multiple Regional Unified Command Structures.

The Governor's Division of Emergency Management shall create eight Regional Response Teams (RRT) to support multi-jurisdictional operations during catastrophic events.

The Governor's Division of Emergency Management shall develop a statewide hurricane evacuation and shelter plan to save lives and reduce the vulnerability of Texans in the event of disasters.

The Governor's Division of Emergency Management shall oversee the implementation of regional response and evacuation plans throughout the state.

The Governor's Division of Emergency Management shall coordinate with independent school districts and public colleges, universities and university systems to provide transportation assets and facilities to enable the execution of state and local evacuation and shelter plans.

The Governor's Division of Emergency Management shall develop policies and procedures to reimburse school districts and public colleges, universities and university systems for evacuation, shelter, or transportation-related expenses in the event that the Texas Legislature or United States Congress designates funding for this purpose.

The Governor's Division of Emergency Management shall direct an annual hurricane evacuation exercise to test the readiness of state and local evacuation and sheltering plans in the event of a disaster.

3. *Evacuation of people with special needs.* To ensure the safe and efficient evacuation of Texans with special needs in the event of a disaster, I hereby direct the Governor's Division of Emergency Management to coordinate with the Department of State Health Services, the Department of Aging and Disability Services, the Governor's Committee on Persons with Disabilities, and other appropriate state agencies to define the term "special needs," and develop a statewide evacuation and shelter plan for persons with special needs.

The Governor's Division of Emergency Management shall coordinate with the Department of State Health Services, the Department of Aging and Disability Services, the Governor's Committee on Persons with Disabilities, other appropriate state agencies, local governments, and appropriate stakeholder groups to develop criteria for evacuation plans for all special needs facilities, to include both licensed and unlicensed facilities.

The Governor's Division of Emergency Management shall ensure local jurisdictions and Regional Unified Command Structures approve evacuation plans maintained by special needs facilities.

The Governor's Division of Emergency Management shall develop and implement a statewide database to assist in the evacuation of the special needs population, with coastal jurisdictions as a priority. RUCS shall be responsible for collecting and providing information for the statewide database.

The Governor's Division of Emergency Management shall develop and implement a plan to address the evacuation and sheltering needs of individuals with companion animals.

4. *Fuel availability and distribution.* To improve fuel availability and distribution during a mass evacuation, I do hereby direct the Texas Department of Transportation to coordinate with the Texas Oil and Gas Association and other industry partners to develop a plan to address fuel availability along major evacuation routes and establish a fuel operations function in the State Operations Center to coordinate the distribution of fuel prior to and during evacuations.

The Governor's Division of Emergency Management shall work with local officials to ensure locally developed evacuation plans address fuel availability during an evacuation.

The Governor's Division of Emergency Management shall establish procedures to distribute fuel in a prioritized manner during an emergency.

The Governor's Division of Emergency Management shall develop policies and procedures to reimburse local governments and other support entities for evacuation-related fuel costs in the event that the Texas Legislature or United States Congress designates funding for this purpose.

5. *Traffic control and management.* To improve traffic control and management during a mass evacuation, I do hereby direct the Texas Department of Public Safety to assume traffic management authority over designated evacuation routes during multi-jurisdictional evacuations in order to move large populations and heavy traffic in a highly-coordinated manner.

The Texas Department of Transportation shall coordinate with the Texas Department of Public Safety to develop contra-flow plans for major hurricane evacuation routes as identified by the Task Force on Evacuation, Transportation and Logistics.

The Texas Department of Transportation shall implement short and long-term solutions to reduce congestion on the one-lane section of U.S. Highway 290 at Brenham, Texas, during an evacuation.

The Texas Department of Transportation shall prioritize for implementation the infrastructure projects recommended in the March 2005 Report to the Governor on Texas Hurricane Preparedness, which address obstructions on evacuation routes during mass evacuations.

The Texas Department of Public Safety shall coordinate with the Department of Homeland Security and the United States Customs and Border Patrol to expedite the flow of traffic through checkpoints on major hurricane evacuation routes and assist in developing traffic management plans to accommodate increased volume at checkpoints during evacuations.

6. *Public awareness.* To increase public awareness, I do hereby direct the Public Utility Commission to work with utility companies that are regulated by the Commission and serve counties in hurricane evacuation zones to include hurricane preparedness and evacuation-related public awareness information in monthly billing statements prior to and during the hurricane season each year.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until it expires by statute or it is modified, amended, rescinded, or superseded by me or by a succeeding governor.

Given under my hand this the 21st day of March, 2006.

Rick Perry, Governor

TRD-200601755

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Proclamation 41-3048

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS I, RICK PERRY, Governor of the State of Texas, hereby certify that all 254 counties in the State of Texas are threatened by high or extreme fire hazard; and

WHEREAS, this threat is caused by severe drought conditions across the State;

NOW THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster and direct that all necessary measures, both public and private as authorized under Section 418.015 of the code, be implemented to meet that disaster.

FURTHER, I hereby order that all actions taken pursuant to this proclamation shall be preauthorized by the State Director of Homeland Security.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 17th day of March, 2006.

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200601751

◆ ◆ ◆

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0457-GA

Requestor:

The Honorable Robert Duncan
Chair, Committee on State Affairs
Texas State Senate
Post Office Box 12068
Austin, Texas 78711

Re: Constitutionality of the application of section 2306.6710, which requires the Department of Housing and Community Affairs to score and rank applications for the low income housing tax credit program according to statutorily specified criteria (RQ-0457-GA)

Briefs requested by April 14, 2006

RQ-0458-GA

Requestor:

The Honorable Russell Wilson
Wilson County Attorney
1420 Third Street
Floresville, Texas 78114

Re: Whether a county attorney may accept appointment as an ombudsman for the National Committee for Employer Support of the Guard and Reserve (RQ-0458-GA)

Briefs requested by April 14, 2006

RQ-0459-GA

Requestor:

The Honorable Bruce Isaacks
Denton County Criminal District Attorney
Post Office Box 2850
Denton, Texas 76202

Re: Whether an indigent parent is entitled to receive a free transcript of hearings and depositions in cases where the state initiates proceedings under chapter 262 of the Family Code (RQ-0459-GA)

Briefs requested by April 14, 2006

RQ-0460-GA

Requestor:

The Honorable William M. Jennings
Gregg County Criminal District Attorney
101 East Methvin Street, Suite 333
Longview, Texas 75601

Re: Statutory maximum salary for the county court-at-law judges in Gregg County (RQ-0460-GA)

Briefs requested by April 16, 2006

RQ-0461-GA

Requestor:

Mr. Ray Stelly, C.P.A.
San Jacinto County Auditor
1 State Highway 150, Room B1
Coldspring, Texas 77331

Re: Payment of legal fees for county officials charged with criminal offenses (RQ-0461-GA)

Briefs requested by April 16, 2006

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200601740

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: March 22, 2006



Opinions

Opinion No. GA-0406

The Honorable Jane Nelson
Chair, Committee on Health and Human Services

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

The Honorable Suzanna Hupp

Chair, Committee on Human Services

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether a telephone interview satisfies an attorney ad litem's duty under Texas Family Code section 107.004(d) to meet with the child before each court hearing or, if the child is under four years of age, with the individual with whom the child ordinarily resides; whether a court has meaningful discretion to determine that the attorney ad litem has shown good cause for not complying with this section (RQ-0387-GA)

S U M M A R Y

Texas Family Code section 107.004(d) requires an attorney ad litem appointed for chapter 262 or chapter 263 purposes to meet in person with a child before each court hearing or, if the child is under four years of age, with the adult with whom the child ordinarily resides. This statutory duty may not be satisfied by conducting a telephone interview. A court has discretion to determine that an attorney ad litem has established good cause for noncompliance with that section if the court finds that compliance was impracticable, not capable of being done or was not in the best interest of the child.

Opinion No. GA-0407

The Honorable Jerry Patterson

Commissioner

Texas General Land Office

Post Office Box 12873

Austin, Texas 78711-2873

Re: Whether Natural Resources Code section 33.613 violates article VII, section 4 or 5 of the Texas Constitution (RQ-0388-GA)

S U M M A R Y

Natural Resources Code section 33.613, which allows a littoral property owner to artificially restore submerged land that has been lost through erosion and is dedicated to the Permanent School Fund and thereby receive title to the land in fee simple without compensating the Fund, violates article VII, section 4 of the Texas Constitution.

Opinion No. GA-0408

The Honorable Ronald D. Hankins

Somervell County Attorney

Post Office Box 1335

Glen Rose, Texas 76043

Re: Authority of a municipality with a population of fewer than 35,000 to impose a hotel occupancy tax in its extraterritorial jurisdiction when the combined rate of state, county, and municipal hotel occupancy taxes would exceed 15 percent (RQ-0390-GA)

S U M M A R Y

Section 351.0025(b) of the Tax Code prohibits a municipality with a population of fewer than 35,000 from adopting and imposing a hotel occupancy tax in its extraterritorial jurisdiction when the combined rate of state, county, and municipal taxes would exceed 15 percent. The section does not, however, prohibit a municipality from imposing its tax if the combined rate did not exceed 15 percent when the municipality adopted its tax but exceeds that rate after the county adopts a county tax.

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at (512) 463-2110.

TRD-200601753

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: March 22, 2006

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EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS PLANTS

SUBCHAPTER P. DIAPREPES ROOT WEEVIL QUARANTINE

4 TAC §19.161

The Texas Department of Agriculture is renewing the effectiveness of the emergency adoption of amended §19.161, for a

4-day period. The text of the amended section was originally published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8371).

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601650

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Original Effective Date: December 2, 2005

Expiration Date: April 4, 2006

For further information, please call: (512) 463-4075

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.1

The Texas State Securities Board proposes an amendment to §115.1, concerning securities dealers and agents. The proposed amendment would define the term "finder" and provide for a restricted registration to act solely in that capacity. An individual engaged only in the limited activity specified must apply for restricted registration as a finder. Persons registered as general securities dealers are permitted to engage in finder activities under their general dealer license.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended rule will be to explicitly inform persons operating as finders that registration is required and to provide a special category of restricted dealer registration for individuals engaged in this limited activity. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed amendment in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-12.

Statutes and codes affected: Texas Civil Statutes, Article 581-12.

§115.1. General Provisions.

(a) Definitions. Words and terms used in this chapter are also defined in §107.2 of this title (relating to Definitions). The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (8) (No change.)

(9) Finder--An individual who receives compensation for introducing an accredited investor to an issuer or an issuer to an accredited investor solely for the purpose of a potential investment in the securities of the issuer, but does not participate in negotiating any of the terms of an investment and does not give advice to any such parties regarding the advantages or disadvantages of entering into an investment, and conducts this activity in accordance with §115.11 of this title (relating to Activities of a Finder). Note that a finder is not permitted to register in any capacity other than as a restricted dealer.

(b) (No change.)

(c) Types of registrations.

(1) (No change.)

(2) Restricted registration. The restricted registrations are as follows:

(A) - (K) (No change.)

(L) registration to deal in all general securities except municipal securities; ~~[and]~~

(M) registration to act exclusively as a finder; and

(N) ~~[(M)]~~ registration with other restrictions which the Securities Commissioner may impose based upon the facts.

(3) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2006.

TRD-200601591

Denise Voigt Crawford
Securities Commissioner
State Securities Board

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 305-8303



7 TAC §115.3

The Texas State Securities Board proposes an amendment to §115.3, concerning securities dealer and agent examinations.

The proposed amendment would provide a full waiver from the examination requirements for an individual applying for a restricted registration as a finder.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the amendment is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amended rule will be to streamline the registration process for persons seeking a restricted registration as a finder since activities permitted under that restricted registration are very limited in scope. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed. There is no anticipated impact on local employment.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed amendment in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Articles 581-28- 1 and 581-13.D. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 13.D provides the Board with authority to waive examination requirements for any applicant or class of applicants.

Cross-reference to Statute: Texas Civil Statutes, Article 581-13.

Statutes and codes affected: Texas Civil Statutes, Article 581-13.

§115.3. Examination.

(a) - (b) (No change.)

(c) Waivers of examination requirements.

(1) (No change.)

(2) A full waiver of the examination requirements of the Texas Securities Act, §13.D, is granted by the Board to the following classes of persons:

(A) - (D) (No change.)

(E) a finder;

(F) ~~[(E)]~~ a person who completed the required examinations, but whose registration has lapsed for more than two years and who has been continually employed in a securities-related position with an entity which was not required to be registered; and

(G) ~~[(F)]~~ a person who completed the required examinations, but whose registration has lapsed for more than two years and who has been continually registered during the period of the lapse (or unregistered for no more than 60 days when transferring from one employer to another) with the NASD and the state securities regulator in the state in which the person maintains its principal place of business.

(3) - (4) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2006.

TRD-200601592

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 305-8303



7 TAC §115.11

The Texas State Securities Board proposes new §115.11, concerning activities of a finder. The proposed new section would set out permitted activities of an individual registering as a finder as well as those activities the individual would be prohibited from engaging in. It would also provide for the disclosures to be made by the finder, specify required recordkeeping, and exclude a finder from the supervisory requirements of §115.10.

Micheal Northcutt, Director, Registration Division, and Benette Zivley, Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Northcutt and Mr. Zivley also have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that the permitted scope of a finder's activities and obligations as a restricted dealer would be specified. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

The Board solicits comments on the proposed rule and asks specifically for suggestions regarding recordkeeping requirements and the scope of permitted and prohibited activities for finders.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Article 581-12.

Statutes and codes affected: Texas Civil Statutes, Articles 581-12 and 13-1.

§115.11. Activities of a Finder.

(a) Prohibited activities. A finder shall not:

(1) participate in negotiating any of the terms of an investment;

(2) give advice to an accredited investor or an issuer regarding the advantages or disadvantages of entering into an investment;

(3) conduct due diligence, provide a valuation, or provide other analysis to an accredited investor or an issuer regarding an investment;

(4) advertise to seek accredited investors or issuers;

(5) have custody of an accredited investor's funds or securities;

(6) serve as an escrow agent for the parties; or

(7) disclose information to an accredited investor or an issuer other than the information described in subsections (b) and (c) of this section.

(b) Required disclosures.

(1) A finder must disclose the following to each accredited investor:

(A) that compensation will be paid to the finder;

(B) that the finder can neither recommend nor advise the accredited investor with respect to the offering; and

(C) any potential conflict of interest in connection with the finder's activities.

(2) The disclosures required by paragraph (1) of this subsection must be provided in writing.

(c) Permitted disclosures.

(1) A finder may provide to an accredited investor some or all of the following information:

(A) the name, address, and telephone number of the issuer of the securities;

(B) the name, a brief description, and price (if known) of any security to be issued;

(C) a brief description of the business of the issuer in 25 words or less;

(D) the type, number, and aggregate amount of securities being offered; and/or

(E) the name, address, and telephone number of the person to contact for additional information.

(2) A finder may provide to an issuer contact information regarding an accredited investor.

(d) Recordkeeping.

(1) A finder is not required to maintain the records listed in §115.5 of this title (relating to Minimum Records).

(2) A finder shall maintain and preserve for a period of five (5) years the following records:

(A) records of compensation received for acting as a finder, including the name of the payor, the date of payment, name of the issuer, and name of the accredited investor;

(B) a copy of Form BD used to register the finder;

(C) copies of any information provided by the finder to prospective accredited investors;

(D) any agreements and/or contracts between the finder and the accredited investor;

(E) any agreements and/or contracts between the finder and the issuer;

(F) any lists of contacts/prospective accredited investors and/or issuers; and

(G) any correspondence with accredited investors and/or issuers.

(3) The records required to be maintained and preserved pursuant to this subsection must be arranged and indexed in a manner that will permit the immediate location of any particular document.

(4) In the event that a records retention system commingles records required to be kept under this subsection with records not required to be kept, representatives of the Securities Commissioner may review all commingled records.

(5) A finder shall, upon written request of the Securities Commissioner, furnish to the Securities Commissioner any records required to be maintained and preserved under this subsection.

(e) Supervisory requirements. A finder is not required to maintain a supervisory system as provided in §115.10 of this title (relating to Supervisory Requirements).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 13, 2006.

TRD-200601593

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 305-8303



TITLE 10. COMMUNITY DEVELOPMENT

PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

CHAPTER 183. TEXAS DEPARTMENT OF ECONOMIC DEVELOPMENT GOVERNING BOARD INVESTMENT POLICY

10 TAC §§183.1 - 183.9

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Office of the Governor, Economic Development and Tourism Division or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Governor, Economic Development and Tourism Division (Office), formerly the Texas Department of Economic Development (Department), proposes the repeal of Chapter 183, §§183.1 - 183.9, setting forth rules of the Texas Department of Economic Development Governing Board Investment Policy.

The repeal of the rules is proposed because Senate Bill 275 of the 78th Legislature abolished the Department and transferred its functions to the Office. New rules will be adopted and are proposed in this issue of the *Texas Register*. New rules are needed because the administration of the Texas Small Business Industrial Development Corporation (TSBIDC) and the Texas Public Facilities Capital Access Program (TEXCAP) (collectively the "Program") transferred from the Department to the Office and bond proceeds can be invested under the Program.

Tracye McDaniel, Executive Director of the Office, has determined that for the first five-year period that the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. McDaniel has also determined that each year of the first five years that the repeal is in effect, the public will benefit from a better understanding of the management of the Office and the Program. There will be no effect on small business. There is no anticipated economic cost to persons and no private property rights are affected by the repeal.

Comments on the proposed repeal may be submitted within 30 days of the publication of this notice to Robin Abbott, Assistant General Counsel, 1100 San Jacinto, 4th Floor, or P.O. Box 12428, Austin, Texas 78711-2428. Comments may be faxed to Ms. Abbott at (512) 463-1932 or e-mailed to rabbott@governor.state.tx.us within 30 days.

The repeal is proposed under the Texas Government Code, §481.005(d), which authorizes the executive director of the Office to adopt rules for programs administered by the Office, and the Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies. Texas Government Code, Chapter 481, creating the Office, Texas Government Code, Chapter 489, creating the Economic Development Bank within the Office, and Vernon's Texas Civil Statutes, Article 5190.6 are affected by the proposed repeal.

§183.1. *Authority.*

§183.2. *Code of Ethics.*

§183.3. *Purposes of Investment Policy Statement.*

§183.4. *Responsible Parties and Their Duties.*

§183.5. *Objectives.*

§183.6. *Permissible and Prohibited Investments and General Guidelines for Investments.*

§183.7. *Standards of Performance.*

§183.8. *Performance and Review Procedures.*

§183.9. *Investment Strategy of Texas Small Business Industrial Development Corporation (TSBIDC) Bond Issue for Economic Development Programs.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601633

Robin Abbott

Assistant General Counsel

Office of the Governor, Economic Development and Tourism Division

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 936-0501

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CHAPTER 183. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION INVESTMENT POLICY

10 TAC §§183.1 - 183.10

The Office of the Governor, Economic Development and Tourism Division (Office), formerly the Texas Department of Economic Development (Department), proposes new Chapter 183, §§183.1 - 183.10, setting forth rules of the Office of the Governor, Economic Development and Tourism Division Investment Policy.

The new rules are proposed because Senate Bill 275 of the 78th Legislature abolished the Department and transferred its functions to the Office of the Governor. The new rules will replace previous rules proposed for repeal in this issue of the *Texas Register*. New rules are needed because the administration of the Texas Small Business Industrial Development Corporation (TSBIDC) and the Texas Public Facilities Capital Access Program (TEXCAP) (collectively the "Program") transferred from the Department to the Office and bond proceeds can be invested under the Program.

Proposed §183.1 sets forth the statutory authority for the rules.

Proposed §183.2 sets forth the policy and priorities for investments under the Program.

Proposed §183.3 sets forth the scope of the rules.

Proposed §183.4 sets forth the prudent person standard for investments.

Proposed §183.5 sets forth limitations and objectives for investments and a strategy for ensuring that there will be adequate funds for a self-supporting program.

Proposed §183.6 delegates the authority to invest Program funds to the Economic Development Bank and to the investment officer.

Proposed §183.7 sets forth training requirements for board members and the investment officer.

Proposed §183.8 provides for investment of funds through authorized dealers.

Proposed §183.9 provides that the investments authorized by statute and by the trust indenture governing the bond issue are eligible investments under the Program.

Proposed §183.10 provides that the Economic Development Bank and the investment officer will establish investment procedures.

Tracye McDaniel, Executive Director of the Office, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rules.

Ms. McDaniel has also determined that each year of the first five years that the rules are in effect, the public will benefit from a better understanding of the management of the Office and the Program. There will be no effect on small business. There is no anticipated economic cost to persons other than an application

fee for entities that choose to participate in the Program and no private property rights are affected by the new rules.

Comments on the proposed rules may be submitted within 30 days of the publication of this notice to Robin Abbott, Assistant General Counsel, 1100 San Jacinto, 4th Floor, or P.O. Box 12428, Austin, Texas 78711-2428. Comments may be faxed to Ms. Abbott at (512) 463-1932 or e-mailed to rabbott@governor.state.tx.us within 30 days.

The new rules are proposed under the Texas Government Code, §481.005(d), which authorizes the executive director of the Office to adopt rules for programs administered by the Office, and the Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies. Texas Government Code, Chapter 481, creating the Office, Texas Government Code, Chapter 489, creating the Economic Development Bank within the Office, and Vernon's Texas Civil Statutes, Article 5190.6 are affected by the proposed rules.

§183.1. Authority.

The Office of the Governor, Economic Development and Tourism Division (Office), on behalf of the Boards of Directors of the Texas Small Business Industrial Development Corporation and TEXCAP (Board), as the investing entities, hereby adopts its written investment policy in compliance with the Public Funds Investment Act, Texas Government Code, Chapter 2256, Subchapter A, as amended (Act) and pursuant to the authority granted by Texas Government Code, Chapter 481, and the Development Corporation Act of 1979, V.T.C.S. Article 5190.6.

§183.2. Policy.

It is the policy of the Board to invest the financial assets of the Corporation pursuant to the following principles in order of priority and in conformance with all applicable federal and state statutes, rules or regulations as well as all bond indenture requirements of these financial assets:

- (1) Preservation and safety of principal;
- (2) Maintaining liquidity in order to meet cash flow needs and to maintain a self-supporting program;
- (3) Providing the highest investment return within the applicable federal and state statutes and bond indenture requirements.

§183.3. Scope.

This investment policy applies to the Texas Small Business Industrial Development Corporation and TEXCAP Corporation bond issuance and all proceeds of the issuance. The Board or anyone acting on its behalf shall comply with the provisions of this section.

§183.4. Prudence.

(a) Prudent person standard. Investments shall be made with judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of the person's own affairs, not for speculation, but for investment considering the probable safety of capital and the probable income to be derived.

(b) Considerations. In determining whether an investment officer/staff has exercised prudence with respect to an investment decision, the determination shall be made taking into consideration the investment of all funds or proceeds under the Board's control rather than a consideration as to the prudence of a single investment; and whether the investment decision was consistent with the written investment policy of the Board.

§183.5. Limitations, Objectives and Strategy.

(a) Limitations.

(1) Investments shall comply with bond indenture covenants, applicable Internal Revenue Service regulations, credit/liquidity facility agreements, and the Act.

(2) Investments shall not have maturities longer than the maturities of the bonds that financed the funds to be invested.

(b) Investment objectives. Investment objectives have been formulated on the following considerations:

(1) Preservation and safety of principal. To assure the re-payment of the principal amounts to bondholders; investments will be made in securities that minimize risk of loss.

(2) Return on Investment. Investments shall be made to maintain a self-supporting program and the payment of interest.

(3) Liquidity of Funds. To meet program cash flow and debt service needs, investment maturities will be managed to provide appropriate funding to meet bond and program obligations.

(4) Marketability. To provide long term confidence and stability of the bonds in the marketplace and to provide the lowest interest cost possible for purchased program obligations through the use of credit enhancement, investments will be made to preserve an adequate investment rating for the bonds.

(c) Strategy. This will be accomplished by purchasing low risk, varied liquid instruments with flexible terms and diversifying the portfolio by maturity period, as appropriate. Investments will be purchased to ensure that funds in the portfolio are sufficiently available to meet all required and/or optional bond redemptions and purchases, acquisition of program obligations, and maintain adequate earnings to cover bond and program expenses in order to provide a self-supporting program.

§183.6. Delegation of Authority.

The responsibility for investing the financial assets is delegated to the Economic Development Bank (Bank) and the Investment Officer, who shall be responsible for all transactions undertaken and shall have procedures established consistent with this chapter. Quarterly reports shall be presented to the Board and Office. All investment transactions shall be conducted pursuant to this chapter and such procedures.

§183.7. Training.

Each member of the board and its investment officer shall attend training that conforms to the requirements of the Act.

§183.8. Authorized Dealers.

The Bank will invest funds through the use of banks and broker/dealers which are approved by the Board according to procedures.

§183.9. Authorized Investments.

(a) Purpose of bond issue. The purpose of the bond issue is to provide a centralized source of low cost funds financing eligible projects, as defined under the Act, through the purchase of a certificate of obligation, bond, note or other obligation hereafter referred to as "Program Obligation," of:

- (1) an eligible city, county, district or other political corporation or subdivision of the State of Texas (the "Public Entities");
- (2) other eligible entities providing financing for the Public Entities; or
- (3) an eligible individual, partnership, corporation, or any other private entity whether organized for profit or not for profit;
- (4) funding a debt service reserve fund; and

(5) paying all of the necessary costs and expenses incidental to the issuance and management of the bonds to achieve a self-supporting program status.

(b) Authorized Investments. The following investments are authorized investments for bond funds, subject to any approval required by a credit/liquidity facility provider:

(1) Governmental Obligations;

(2) bonds; debentures, notes or other evidences of indebtedness issued or guaranteed by any of the following federal full faith and credit agencies; Export Import Bank; Farmers Home Administration, Federal Financing Bank, Federal Housing Administration and the Government National Mortgage Association;

(3) certificates of deposit or interest bearing time deposits, including those of the Trustee, secured at all times by collateral security described in this subsection and subsection (a) of this section. Such certificates are only acceptable with federally or state-chartered commercial banks, including the Trustee, savings and loan associations and mutual savings banks that are insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation, as applicable. Unsecured obligations of a savings and loan association must be rated Aa or better by Moody's and AA or better by S&P Commercial banks must have a minimum capital surplus and undivided profits of at least \$50,000,000 and the unsecured obligations of said commercial banks, or of a bank holding company of which it is the lead bank, must be rated Aa or better by Moody's and AA or better by S&P.

(4) the following investments, fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporations: certificates of deposit, savings accounts, deposit accounts or depository receipts of banks, including the Trustee, savings and loan associations and mutual savings banks;

(5) bankers' acceptances or certificates of deposit of commercial banks or savings and loan associations which mature not more than one year after the date of purchase. The banks or savings and loan associations (as opposed to their holding companies) must be rated for unsecured debt at the time of purchase of the investments in one of the two highest classifications established by not less than two standard rating services or must be approved by the letter of credit/liquidity facility provider;

(6) bonds, debentures, notes or other evidences of indebtedness issued or guaranteed by any of the following United State government non-full faith and credit agencies: Banks for Cooperatives, Federal Intermediate Credit Bank, Federal Home Loan Bank and Federal Land Bank;

(7) commercial paper rated at the time of purchase in the single highest classification by not less than two standard rating services and which matures not more than 270 days after the date of purchase;

(8) any debt obligation, the interest on which is exempt from federal income taxation pursuant to Section 103 of the Code, and in which an insurance company organized under the laws of the State may legally invest its money at the time of such investment, and which is approved by the Banks; and

(9) the Investment Agreement or Investment Agreements as approved by the letter of credit/liquidity facility provider (or, prior to the first Tender Date, the Issuer); and

(10) Program Obligations rated A or better by Moody's or S&P or a Program Obligation supported by credit enhancement that is rated A or better by Moody's or S&P with a maturity not to exceed 20 years, unless approved by the Governing Board and any credit/liquidity

facility provider for a longer maturity not to exceed 30 years, provided that no Program Obligation shall have a maturity that exceeds the maturity of the Bonds;

(11) any other investments authorized under the indenture and the Act.

§183.10. Internal Controls and Responsible Parties.

The Bank, in consultation with the Investment Officer, shall establish investment procedures to ensure that the statutory requirements of the Act and any bond indenture covenants are met.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601634

Robin Abbott

Assistant General Counsel

Office of the Governor, Economic Development and Tourism Division

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 936-0501



TITLE 19. EDUCATION

PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

CHAPTER 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION SUBCHAPTER G. CERTIFICATION REQUIREMENT FOR CLASSROOM TEACHERS

19 TAC §§230.191, 230.193 - 230.196, 230.198, 230.199

The State Board for Educator Certification (SBEC) proposes amendments to §§230.191, 230.193, 230.194, 230.195, 230.196, 230.198, and 230.199, relating to certification requirement for classroom teachers. The sections establish provisions relating to preparation required in all programs (§230.191); teacher certificate--secondary (§230.193); teacher certificate--all-level (§230.194); special education certificates (§230.195); vocational agriculture certificates (§230.196); vocational marketing education certificates (§230.198); and endorsements (§230.199). The proposed amendments provide for the SBEC to cease issuing certain ExCET-based certificates on September 1, 2007. The superseded certificates will remain valid and SBEC will not require educators who hold one of these certificates to obtain the corresponding new certificate. The amendments will allow for an overlap of the superseded certificates and corresponding certification exams.

Pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if the agency finds that a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice, the proposed amendments were filed as emergency adoptions taking effect immediately on January 19, 2006. The emergency adopted amendments were published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 619). The SBEC found that emergency amendments were necessary to comply with the requirements of state and federal law.

With the exception of technical edits, the proposed amendments reflect rule actions adopted by the SBEC in 2005. Specifically, the proposed amendments accomplish the following.

In §230.191, language is added to subsections (c)(2)(A)(v), (c)(2)(B)(iii), and (f) to allow provisions for the ExCET-based secondary Grades 6-12 certificates and all level prekindergarten-Grade 12 certificates to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.193, language is modified in subsection (d) to allow provisions relating to art, dance, journalism, speech communications, and theatre arts to expire on September 1, 2007, and provisions relating to business and other languages to expire on September 1, 2008.

In §230.194, language is added in subsection (c) to allow provisions relating to art, speech communications-theatre arts, and theatre arts to expire on September 1, 2007.

In §230.195, language is added in subsection (c) to allow provisions of the section to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.196, language is added in subsection (g) to allow provisions of the section to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.198, language is added in subsection (f) to allow provisions of the section to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.199, language is added in subsection (c)(4)(D) to allow provisions relating to endorsements for the visually handicapped delivery system area to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

These amendments are proposed in conjunction with proposed amendments to rules in Subchapter P, Requirements for Standard Certificates and Specialized Assignments or Programs, of this chapter and proposed amendments in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates.

Patricia Hayes, associate commissioner for educator quality and P-16 initiatives, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Hayes has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be that obsolete certificates will be replaced by certificates based on the public school curriculum outlined in the Texas Essential Knowledge and Skills. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and P-16 Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Patricia Hayes, not more than 15 calendar

days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid.

The proposed amendments implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (3).

§230.191. Preparation Required in All Programs.

(a) - (b) (No change.)

(c) The teacher education program shall include academic specializations and teaching fields in subjects approved to be taught in the public schools of Texas or delivery systems authorized by the State Board of Education [(SBOE)] under the Texas Education Code (TEC) , §28.002(b), for use in the public schools of Texas.

(1) In addition to the teaching certificates specified in this subchapter and Chapter 233 of this title (relating to Categories of Classroom Teaching Certificates), educator preparation entities operating as alternative certification programs under TEC, [Texas Education Code (TEC)] §21.049, relating to alternative certification, may recommend candidates for certification in the following areas: prekindergarten-Grade 12 [Grades prekindergarten-12] English as a second language [(ESL);] and prekindergarten-Grade 12 [Grades prekindergarten-12] generic special education. The provisions of this paragraph expire on September 1, 2004.

(2) For the teacher certificates, each academic specialization, teaching field, and delivery system shall comply with one or more of the options in this paragraph. In accordance with the TEC, [Texas Education Code (TEC)] §21.050(b), additional semester hours in education are permissible for certification in bilingual education, English as a second language, early childhood education, and special education. For all other certificates based on college-approved teacher education programs, reading shall be included in the approved program. Reading instruction shall be developmental and corrective and include study relating to the phonetic structure of the English language; knowledge of reading instruction such as language-based, phonics-based, and meaning-based instruction; demonstration and application of reading theories; and identification of and teaching strategies and resources for dyslexia and other reading disorders. Reading courses that fulfill these requirements may be offered beyond the 18 semester hours of professional development courses.

(A) The options for teacher certificate--secondary include the following.

(i) Option I (Grades 6-12) requires one 36-semester-hour (including 21 semester hours of upper-division courses) teaching field, with an additional 12 semester hours in a directly supporting field(s).

(ii) Option II (Grades 6-12) requires two 24-semester-hour (including 12 semester hours of upper-division courses in each) teaching fields, delivery systems, or a combination of a teaching field and a delivery system.

(iii) Option III (Grades 6-12) requires one 48-semester-hour (including 24 semester hours of upper-division courses) broad teaching field.

(iv) Option IV (Grades 6-12) requires one 48-semester-hour (including 24 semester hours of upper-division courses, 12 of which are in a single area) composite teaching field. A minimum of six semester hours shall be required in each area.

(v) The provisions of this subparagraph expire on September 1, 2007.

(B) The options for teacher certificate--all-level [~~certificate all-level~~] include the following.

(i) Option I (prekindergarten-Grade 12) requires one 48-semester-hour (including 24 semester hours of upper-division courses) academic specialization, which includes six semester hours designed for elementary level and six semester hours designed for secondary level.

(ii) Option II (prekindergarten-Grade 12) requires one 36-semester-hour (including 18 semester hours of upper-division courses) academic specialization, which includes six semester hours designed for elementary level and six semester hours designed for secondary level. Option II is only available for the physical education academic specialization.

(iii) The provisions of [~~clause (ii) of~~] this subparagraph expire on September 1, 2007 [2005].

(d) The professional development sequence for the initial teacher certificate shall consist of 18 semester hours of upper-division courses. The following [~~three~~] components must be included.

(1) Core requirements common to all grade level options include studies of:

(A) teaching-learning processes, including measurement and evaluation of student achievement;

(B) human growth and development;

(C) knowledge and skills concerning the unique needs of special learners, such as:

(i) multicultural education: the impact of cultural, ethnic, language, and social differences upon instructional processes;

(ii) the characteristics, assessment, least restrictive alternatives, and admission, review, and dismissal processes for students requiring individualized or specialized education programs; and

(iii) the characteristics, identification, and needs of gifted and talented students;

(D) legal and ethical aspects of teaching to include the recognition of and response to signs of abuse and neglect in children;

(E) structure, organization, and management of the American school system, with emphasis upon the state and local structure in Texas; and

(F) educational computing, media, and other technologies.

(2) Methodology requirements specifically designed for the grade level option selected shall include studies of the following:

(A) instructional methods and strategies that emphasize practical applications of the teaching-learning processes;

(B) curriculum organization, planning, and evaluation;

(C) basic principles and procedures of classroom management with emphasis on classroom discipline, using group and individual processes as well as different techniques and procedures adapted to the personality of the teacher; and

(D) the scope and sequence of the essential knowledge and skills for all subjects required in the elementary course of study that are not included in the academic specializations when elementary options are selected.

(e) The professional development sequence for the teacher certificate--all-level shall include a minimum of three semester hours designed for the elementary level and three semester hours designed for the secondary level.

(f) The provisions of subsections (d) and (e) of this section expire on September 1, 2007.

§230.193. *Teacher Certificate--Secondary.*

(a) - (c) (No change.)

(d) The provisions of this section expire on September 1, 2005, with the exception of teaching fields in Art, [~~Business,~~] Dance, Journalism, [~~Other Languages,~~] Speech Communications, and Theatre Arts, which expire on September 1, 2007, and the teaching fields in Business and Other Languages, which expire on September 1, 2008.

§230.194. *Teacher Certificate--All-Level.*

(a) The teacher certificate--all-level shall be based upon completion of a teacher education program as described in §230.191 of this title (relating to Preparation Required in All Programs). Areas of academic specialization for the teacher certificate--all-level shall be:

(1) art;

(2) music;

(3) physical education;

(4) speech communications-theatre arts; and

(5) theatre arts.

(b) The provisions in paragraphs (2) and (3) of this section expire on September 1, 2005.

(c) The provisions of paragraphs (1), (4), and (5) of this section expire on September 1, 2007.

§230.195. *Special Education Certificates.*

(a) The special education certificates shall be based upon completion of a teacher education program as described in §230.191(a), (b), and (c) of this title (relating to Preparation Required in All Programs). In accordance with the Texas Education Code [(TEC)], §21.050(b), additional semester hours in education are permissible for certification in special education. Hearing impaired specialization shall prepare the individual to teach prekindergarten through Grade [~~grade~~] 12 in programs designed to serve the hearing impaired and shall require 36 semester hours in courses specifically designed for teaching the deaf and severely hard of hearing, including:

(1) survey of special education;

(2) foundations of education for the deaf (history of education of the deaf, psychology of deafness, the state curriculum for the deaf, and the legal aspects of education for the deaf);

(3) audiology (auditory training and testing and speech reading);

(4) speech for the deaf;

- (5) language for the deaf;
- (6) manual communication (finger spelling, signed English, and American Sign Language); and
- (7) teaching reading to the deaf.

(b) The professional development sequence for special education certificates shall consist of 18 semester hours of upper-division courses. Reading, which may be offered beyond the 18 semester hours of professional development courses, must be included. Reading instruction will be developmental and corrective, and will incorporate identification, teaching strategies, and resources for dyslexia and related disorders and other reading disorders. The following components must be included.

(1) Core requirements common to all grade levels shall include §230.191(d) [(e)] (1) of this title (relating to Preparation Required in All Programs).

(2) Methodology requirements specifically designed for both the elementary and secondary grade levels shall include §230.191(d) [(e)] (2) of this title.

(c) The provisions of this section expire on September 1, 2007.
 §230.196. *Vocational Agriculture Certificates.*

(a) The program shall include at least one of the following specializations:

- (1) production agriculture; or
- (2) ornamental horticulture.

(b) The specialization in production agriculture shall consist of 48 semester hours (24 semester hours of upper-division courses) of technical agriculture as follows:

- (1) agricultural economics--three semester hours;
- (2) animal science--nine semester hours;
- (3) soil and plant science--nine semester hours;
- (4) agricultural engineering--nine semester hours; and
- (5) scientific agriculture electives--18 semester hours.

(c) The specialization in ornamental horticulture shall consist of 48 semester hours (24 semester hours of upper-division courses) of technical agriculture. The program shall include the following areas:

- (1) agricultural economics;
- (2) genetics (plant reproduction);
- (3) greenhouse and nursery management;
- (4) plant nutrition;
- (5) plant pathology;
- (6) plant physiology;
- (7) plant and soil science; and
- (8) taxonomy of flowering plants.

(d) The professional development sequence shall consist of 18 semester hours of upper-division courses. No more than nine semester hours of the professional development sequence may be completed in vocational agriculture education courses. Reading, which may be offered beyond the 18 semester hours of professional development, must be included. Reading instruction will be developmental and corrective, and will incorporate identification, teaching strategies, and resources for dyslexia and other reading disorders.

(1) Core requirements specifically designed for secondary grade levels shall include §230.191(d) [(e)] (1) of this title (relating to Preparation Required in All Programs).

(2) Methodology requirements shall include, but need not be limited to:

- (A) adult and young farmer education;
- (B) youth leadership development and activities;
- (C) supervision of occupational experience programs;
- (D) history, principles, and foundations of vocational education in agriculture;
- (E) advisory councils for vocational agriculture;
- (F) special needs of students in vocational agriculture;
- (G) instructional methods and strategies that emphasize practical applications of the teaching-learning processes;
- (H) curriculum organization, planning, and evaluation; and

(I) basic principles and procedures of classroom management with emphasis on classroom discipline, using group processes as well as different techniques and procedures adapted to the personality of the teacher.

(e) Additional requirements for assignment to specialized programs in vocational agriculture are described in this chapter.

(f) Students also planning to qualify for a secondary teaching certificate should complete a secondary, Option II, teaching field with the amount in each field to be determined by the preparation program.

(g) The provisions of this section expire on September 1, 2007.
 §230.198. *Vocational Marketing Education Certificates.*

(a) The vocational marketing education certificate shall be based upon completion of a teacher education program as described in §230.191 of this title (relating to Preparation Required in All Programs).

(b) Academic preparation and work experience required for the vocational marketing education certificate shall consist of:

(1) 48 semester hours (24 semester hours upper-division courses) that include the following:

- (A) introduction to business;
- (B) business communication;
- (C) business law;
- (D) elementary accounting;
- (E) statistics;
- (F) retailing;
- (G) marketing;
- (H) principles of management;
- (I) principles of advertising; and
- (J) salesmanship; and

(2) two years of wage-earning experience approved by the teacher education program in one or more of the marketing occupations or one year of wage-earning experience in addition to 1,000 clock hours of employment experience supervised by the approved teacher education program.

(c) The professional development sequence shall require 18 semester hours of upper-division courses. No more than nine semester hours of the professional development sequence may be completed in vocational marketing education courses. Reading, which may be offered beyond the 18 semester hours of professional development courses, must be included. Reading instruction will be developmental and corrective, and will incorporate identification, teaching strategies, and resources for dyslexia and other reading disorders.

(1) Core requirements specifically designed for secondary grade levels shall include §230.191(d) [(e)] (1) of this title.

(2) Methodology requirements shall include §230.191(d) [(e)] (2)(A)-(C) of this title.

(d) Additional requirements for assignment to specialized programs in vocational marketing education are described in this chapter.

(e) Students also planning to qualify for a secondary teaching certificate should complete a secondary, Option II, teaching field with the amount in each field to be determined by the preparation program [institution].

(f) The provisions of this section expire on September 1, 2007.
§230.199. *Endorsements.*

(a) - (b) (No change.)

(c) Program requirements for endorsement in delivery system areas.

(1) - (3) (No change.)

(4) Visually handicapped.

(A) Certificate requirement. The visually handicapped endorsement may be added only to special education certificates or to elementary or secondary teacher certificates.

(B) Professional development. The professional development sequence for the visually handicapped endorsement shall consist of [÷] 21 semester hours directly related to teaching the visually handicapped that must include, but need not be limited to:

(i) physiological, psychological, and social factors of blindness;

(ii) literary braille (grade II);

(iii) special braille notations (including nemeth code, braille music, scientific notation, formal and foreign language);

(iv) media, materials, and adaptations;

(v) methods of instruction (including low vision, orientation and mobility, vocational and career exploration, and multihandicapped [multihandicapped]);

(vi) assessment and programming;

(vii) intervention and parent training; and

(viii) survey of exceptional children.

(C) ExCET requirement: Visually Handicapped.

(D) The provisions of this paragraph expire on September 1, 2007.

(5) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2006.

TRD-200601693

Patricia Hayes

Associate Commissioner, Educator Quality and P-16 Initiatives

State Board for Educator Certification

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 475-1497



SUBCHAPTER N. CERTIFICATE ISSUANCE PROCEDURES

19 TAC §230.436

The State Board for Educator Certification (SBEC) proposes an amendment to §230.436, relating to certification fees. The section establishes the schedule of fees for certification services. The proposed amendment would provide clarification regarding the fee for issuance of the Temporary Teacher certificate and establish a fee for the issuance of the Visiting International Teacher certificate.

The proposed amendment would remove language in paragraph (11) to clarify that the Temporary Teacher certificate may be issued only based on recommendation by an approved Texas public school district.

The proposed amendment would add new paragraph (21) to set a fee of \$50 for issuance of the Visiting International Teacher certificate. The new Visiting International Teacher certificate was approved by the SBEC at its October 13, 2004 meeting. However, the rule creating the new certificate (19 TAC §232.6) did not set a fee for certificate issuance. The new Visiting International Teacher certificate ensures that participants in recognized exchange programs are highly qualified and meet the requirements of the No Child Left Behind Act. The new certificate replaces permits for Exchange Teachers (19 TAC §230.510) and permits for Teachers for Bilingual Education Programs (19 TAC §230.511) which do not comply with the requirements of the No Child Left Behind Act.

Additional non-substantive, technical edits would also be made to this section.

With the exception of the technical edits, the proposed amendment reflects action taken by the SBEC in 2005. The SBEC confirmed action on the proposed amendment at its January 2006 meeting.

Patricia Hayes, associate commissioner for educator quality and P-16 initiatives, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for state government as a result of enforcing or administering the amendments. An estimated cost of \$124,800 is anticipated for fiscal year 2006 for initial costs for programming. There may be other additional costs for fiscal year 2006 that are unknown at this time. On-going costs to maintain this component for the remaining fiscal years are unknown at this time. There will be no fiscal implications for local government.

Ms. Hayes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be efficient and updated rules governing the fees charged for issuance of certificates to public school educators. There will be no effect on small businesses. There is anticipated economic cost to persons who are

required to comply with the amendment. For each year of the first five years the amendment is in effect, an individual seeking certification as a visiting international teacher would pay a fee of \$50. Individuals would also be required to pay an additional fee of \$2.00 for the purpose of recovering the cost of the Texas Online Initiative as required by 19 TAC §230.438.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and P-16 Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Patricia Hayes, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; §21.041(b)(4), which requires the SBEC to specify the requirements for the issuance and renewal of an educator certificate; §21.041(b)(5), which requires the SBEC to provide for the issuance of an educator certificate to a person who holds a similar certificate issued by another state or foreign country, subject to §21.052; and §21.041(c), which requires the SBEC to propose a rule adopting a fee for the issuance and maintenance of an educator certificate that is adequate to cover the cost of administration of this subchapter.

The proposed amendments implement Texas Education Code, §21.031(a); §21.041(b)(1), (2), (4) and (5); and §21.041(c).

§230.436. *Schedule of Fees for Certification Services.*

An applicant for a certificate or a school district requesting a permit shall pay the applicable fee from the following list.

- (1) Standard Educational Aide certificate--\$30.
- (2) Standard certificate, additional specialization, teaching field, or endorsement/delivery system, based on recommendation by an approved teacher preparation entity or State Board for Educator Certification authorization; or extension or conversion of certificate--\$75.
- (3) Probationary certificate based on recommendation by an approved teacher preparation entity or Texas public school district--\$50.
- (4) Duplicate of certificate or change of name on certificate--\$45.
- (5) Addition of certification based on completion of appropriate examination--\$75.
- (6) Review of a credential issued by a jurisdiction other than Texas (nonrefundable)--\$175.
- (7) Temporary credential based on a credential issued by a jurisdiction other than Texas--\$50.

(8) Initial permit, reassignment on permit with a change in assignment or school district, renewal [is] for nonconsecutive years, or renewal of permit on a hardship basis (nonrefundable)--\$55.

(9) Renewal in the school district of a permit at the same target certificate level and initial activation, or renewal in the same school district of a temporary classroom assignment permit--no fee.

(10) National criminal history check for all first-time applicants for credentials--\$45.

(11) Temporary Teacher certificate based on recommendation by an approved [teacher preparation entity or] Texas public school district--\$50.

(12) Review of [an] credentials requiring analysis and research of college or university transcript and degrees for issuance of a temporary certificate (nonrefundable)--\$175.

(13) On-time renewal of Standard Educational Aide certificate--\$10.

(14) Additional fee for late renewal of Standard Educational Aide certificate--\$5.

(15) Reactivation of an [a] inactive Standard Educational Aide certificate--\$15.

(16) Reinstatement following restitution of child support or student loan repayment for Standard Educational Aide certificate [Education Aide Certificate]--\$20.

(17) On-time [One-time] renewal of Standard certificate (to include any paraprofessional certificates if held)--\$20.

(18) Additional fee for late renewal of Standard certificate--\$10.

(19) Reactivation of an inactive Standard certificate--\$40.

(20) Reinstatement following restitution of child support or student loan repayment--\$50.

(21) Visiting International Teacher certificate--\$50.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2006.

TRD-200601694

Patricia Hayes

Associate Commissioner, Educator Quality and P-16 Initiatives

State Board for Educator Certification

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 475-1497



SUBCHAPTER P. REQUIREMENTS FOR STANDARD CERTIFICATES AND SPECIALIZED ASSIGNMENTS OR PROGRAMS

19 TAC §§230.482 - 230.484

The State Board for Educator Certification (SBEC) proposes amendments to §§230.482 - 230.484, relating to requirements for standard certificates and specialized assignments or programs. The sections establish provisions relating to specific requirements for standard certificates and endorsements (§230.482); specific requirements for standard career and

technology certificates based on experience and preparation (§230.483); and eligibility requirements for specialized assignments or programs (§230.484). The proposed amendments provide for the SBEC to cease issuing certain ExCET-based certificates on September 1, 2007. The superseded certificates will remain valid and SBEC will not require educators who hold one of these certificates to obtain the corresponding new certificate. The amendments will allow for an overlap of the superseded certificates and corresponding certification exams.

Pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if the agency finds that a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice, these proposed amendments were filed as emergency adoptions taking effect immediately on January 19, 2006. The emergency adopted amendments were published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 622). The SBEC found that emergency amendments were necessary to comply with the requirements of state and federal law.

With the exception of technical edits, the proposed amendments reflect rule actions adopted by the SBEC in 2005. Specifically, the emergency amendments accomplish the following.

In §230.482, language is added in subsection (e) to establish that the provisions of subsection (a)(2), (3), and (4), and subsections (b) and (c) of this section, relating to standard classroom teacher certificate--all level; standard special education certificates; standard agricultural science and standard horticultural science certificates; standard marketing education certificates; and endorsements shall expire on September 1, 2007.

In §230.483, language is added in subsection (b)(4) to allow provisions relating to the standard marketing education certificate to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

In §230.484, language is added in subsection (d)(2)(F) to allow provisions relating to agricultural science and technology to expire on September 1, 2007. Additional non-substantive, technical edits are also made to this section.

These amendments are proposed in conjunction with proposed amendments to rules in Subchapter G, Certification Requirements for Classroom Teachers, of this chapter and proposed amendments in 19 TAC Chapter 233, Categories of Classroom Teaching Certificates.

Patricia Hayes, associate commissioner for educator quality and P-16 initiatives, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Ms. Hayes has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be that obsolete certificates will be replaced by new certificates based on the public school curriculum outlined in the Texas Essential Knowledge and Skills. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All re-

quests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and P-16 Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Patricia Hayes, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid.

The proposed amendments implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (3).

§230.482. Specific Requirements for Standard Certificates and Endorsements.

(a) The following certificates require completion of an approved educator preparation program offered under Subchapter G of this chapter (relating to Certification Requirement for Classroom Teachers [Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements]):

- (1) standard classroom teacher certificate--secondary;
- (2) standard classroom teacher certificate--all level;
- (3) standard special education certificates;
- (4) standard agricultural science and standard horticultural science certificates; and
- (5) standard home economics certificate.

(b) The standard marketing education certificate requires one of the following:

(1) completion of an approved program offered under §230.198 of this title (relating to Vocational Marketing Education Certificates); or

(2) completion of requirements in §230.483(b) of this title (relating to Specific Requirements for Standard Career and Technology [Vocational] Certificates Based on Experience and Preparation [in Skill Areas]).

(c) All endorsements require completion of an approved program offered under §230.199 of this title (relating to Endorsements) or completion of requirements under provisions of §230.437 of this title (relating to Issuance of Certificates Based on Examination).

(d) The provisions of subsection (a)(5) [(a), paragraph (5)] of this section shall expire on September 1, 2005.

(e) The provisions of subsection (a)(2), (3), and (4), and subsections (b) and (c) of this section shall expire on September 1, 2007.

§230.483. Specific Requirements for Standard Career and Technology Certificates Based on Experience and Preparation.

- (a) (No change.)
- (b) Standard marketing education certificate.

(1) The standard marketing education certificate may be based on the program requirements specified in Subchapter G of this

chapter [title] (relating to Certification Requirement for Classroom Teachers [Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements]) or preparation and experience in the skill area.

(2) Certification based on preparation and experience in the skill area shall require:

(A) a bachelor's degree from an accredited institution with six semester hours of courses in retailing and marketing;

(B) completion of SBEC requirements in the United States and Texas Constitutions;

(C) two years of wage-earning experience approved by the employing superintendent or certification officer of a college or university approved to prepare teachers for the vocational certificate in one or more of the marketing occupations;

(D) 12 semester hours of professional development from an institution with an approved program in marketing education that includes the following:

- (i) history and philosophy of vocational education;
- (ii) methods of teaching marketing and distributive education;
- (iii) organizing and managing marketing education programs; and
- (iv) techniques for coordinating marketing education programs; and

(E) two creditable years, as defined in Subchapter Y of this chapter, of teaching experience on emergency permits in the area of marketing education.

(3) The standard marketing education certificate shall establish eligibility to teach cooperative training, coordinated vocational-academic education, pre-employment [preemployment] laboratory, and vocational education for the handicapped in marketing and distributive education.

(4) The provisions of this subsection expire on September 1, 2007.

(c) - (h) (No change.)

§230.484. Eligibility Requirements for Specialized Assignments or Programs.

(a) - (c) (No change.)

(d) Requirements for eligibility to teach in specialized assignments or programs shall be as follows.

(1) (No change.)

(2) Agricultural science and technology.

(A) Horticulture. Eligibility to teach horticulture shall require a valid standard certificate for horticultural sciences. No additional course or workshop shall be required for assignment to pre-employment [preemployment] laboratory education (PELE) or vocational education for the handicapped programs (VEH) in horticulture.

(B) Cooperative training programs. Eligibility to teach cooperative training programs shall require a valid provisional certificate for agricultural science and one of the following:

(i) a workshop sponsored by the Texas Education Agency (TEA) that is designed to provide specialized training for teachers assigned to implement and conduct cooperative training programs; or

(ii) three semester hours of agriculture education in the area of the special agricultural science and technology program.

(C) Pre-employment [Preemployment] laboratory education and VEH. Eligibility to teach PELE or VEH shall require a valid Texas certificate for agricultural science and one of the following:

(i) a workshop sponsored by the TEA that is designed to provide specialized training for teachers assigned to teach pre-employment [preemployment]; or

(ii) six semester hours of technical agriculture in the area of the special agricultural science and technology program.

(D) Courses and workshops. Agriculture education course work and workshops sponsored by the TEA shall be conducted by institutions approved for the preparation of agricultural science and technology teachers.

(E) Teachers assigned to Career Investigation and Career Connections must hold a teacher certification in any of the Career and Technology (CATE) program areas, and shall participate in a TEA-approved [Texas Education Agency (TEA) approved] two hour workshop for beginning Career Investigation / Career Connections teachers prior to teaching the course. Teachers must also attend and participate in a TEA-sponsored [TEA sponsored] CATE Professional Development Conference prior to assignment.

(F) The provisions of this paragraph expire on September 1, 2007.

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2006.

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Patricia Hayes

Associate Commissioner, Educator Quality and P-16 Initiatives

State Board for Educator Certification

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For further information, please call: (512) 475-1497



CHAPTER 232. GENERAL CERTIFICATION PROVISIONS

SUBCHAPTER B. CERTIFICATE RENEWAL AND CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS

19 TAC §232.850, §232.851

The State Board for Educator Certification (SBEC) proposes amendments to §232.850 and §232.851, relating to certificate renewal and continuing professional education (CPE) requirements. The sections establish the number and content of required CPE hours (§232.850) and specify the CPE requirements by classes of certificates (§232.851). The proposed amendments establish a prorated schedule of CPE hours that may be used by educators seeking to renew multiple classes of standard certificates issued with different effective dates during the same five-year renewal cycle. The proposed amendments also add CPE requirements for holders of school librarian certificates and holders of standard certificates for supervisors,

special education supervisors, vocational supervisors, visiting teachers, and special education visiting teachers. Holders of certain newly added certificates are exempt from the CPE hours during the first five-year renewal period. The purpose of the rule action is to clarify renewal requirements and provide relief to educators who will renew multiple classes of certificates issued during the same five-year renewal cycle.

Pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if the agency finds that a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice, these proposed amendments were filed as emergency adoptions taking effect immediately on January 19, 2006. The emergency adopted amendments were published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 624). The SBEC found that emergency amendments were necessary to comply with the requirements of state and federal law.

With the exception of technical edits, the proposed amendments reflect the separate rule actions adopted by the SBEC in 2004 and 2005. Specifically, the proposed amendments accomplish the following:

- (1) change language in §232.850(a) to indicate that the appropriate number of CPE hours must be completed during each five-year renewal period for each class of certification held;
- (2) add language in §232.850(e) to allow an educator who is issued an additional class of certificate after the beginning of the five-year renewal cycle to satisfy the renewal requirement by completing a minimum of one-fifth of the required CPE hours for each full year that the additional class of certificate is valid;
- (3) add language in §232.851(d) to require school librarians to complete the same 200 CPE hour requirement as learning resources specialists;
- (4) add language to §232.851(l) to clarify that the holder of more than one class of standard certification would be required to complete no more than 200 CPE hours for renewal of all certificates held unless otherwise specified;
- (5) add language to §232.851(m) to require 200 CPE hours every five years for renewal of standard certificates for supervisors, special education supervisors, vocational supervisors, visiting teachers, and special education visiting teachers; and
- (6) add language to §232.851(n) to exempt supervisors, special education supervisors, vocational supervisors, visiting teachers, and special education visiting teachers from the CPE hours during the first five-year renewal period of the standard certificate.

The proposed amendments also re-title the chapter and subchapter, as follows. The title of 19 TAC Chapter 232 changes to "General Certification Provisions" from "General Requirements Applicable to All Certificates Issued." Subchapter "R" is changed to "B" to allow for greater use of this chapter.

Patricia Hayes, associate commissioner for educator quality and P-16 initiatives, has determined that for the first five-year period the amendments are in effect there will be fiscal implications for state government as a result of enforcing or administering the amendments. An estimated cost of \$10,400 is anticipated for fiscal year 2006 to modify the existing certification information system to accommodate the proposed changes in certification. There may be other additional costs for fiscal year 2006 that are unknown at this time. Additional costs for the remaining fiscal years related to tracking the staggered continuing education re-

quirements are unknown at this time. There will be no fiscal implications for local government.

Ms. Hayes has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be to clarify requirements for educators seeking renewal of a standard certificate. Also, relief will be provided to educators who will renew multiple classes of certificates issued during the same renewal cycle. These amendments would allow educators with multiple certificates to synchronize the expiration dates for their certifications. This may streamline and simplify the renewal process for the educator, making it more efficient. However, it is unclear whether these provisions would result in a cost savings to educators who must renew multiple certificates. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and P-16 Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Patricia Hayes, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments are proposed under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(9), which requires the SBEC to provide for continuing education requirements.

The proposed amendments implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (9).

§232.850. Number and Content of Required Continuing Professional Education Hours.

(a) Standard certificate. The appropriate number of [At least 150] clock hours of continuing professional education (CPE), as specified in §232.851 of this title (relating to Number of Required Continuing Professional Education Hours by Classes of Certificates), must be completed during each five-year renewal period. Educators should complete a minimum of 20 clock hours of CPE each year of the renewal period. An educator renewing multiple certificates should complete a minimum of five CPE clock hours each year in the content area knowledge and skills for each certificate being renewed.

(b) - (d) (No change.)

(e) An educator eligible to renew multiple classes of certificates issued during the same renewal period may satisfy the requirements specified in §232.851 of this title for any class of certificate issued for less than the full five-year period by completing a prorated number of the required CPE hours. Educators must complete a minimum of one-fifth of the additional CPE hours for each full calendar year that the additional class of certificate is valid.

§232.851. Number of Required Continuing Professional Education Hours by Classes of Certificates.

(a) Holders of the Standard Superintendent Certificate must complete 200 clock hours of continuing professional education every five years. Specific requirements are contained in §242.30 of this title (relating to Requirements for Continuing Education and the Renewal of the Standard Superintendent Certificate).

(b) Holders of the Standard Principal Certificate must complete 200 clock hours of continuing professional education every five years. Specific requirements are contained in §241.30 of this title (relating to Requirements to Renew the Standard Principal Certificate).

(c) Holders of the Standard School Counselor Certificate must complete 200 clock hours of continuing professional education every five years.

(d) Holders of the Standard School Librarian Certificate and Learning Resources Specialist Certificate must complete 200 clock hours of continuing professional education every five years.

(e) Holders of the Standard Educational Diagnostician Certificate must complete 200 clock hours of continuing professional education every five years.

(f) Holders of the Standard Reading Specialist Certificate must complete 200 clock hours of continuing professional education every five years.

(g) Holders of the Standard Master Teacher Certificate must complete 200 clock hours of continuing professional education every five years.

(h) Holders of the Standard Classroom Teacher Certificate must complete 150 clock hours of continuing professional education every five years. Specific requirements are contained in §232.850 of this title (relating to Number and Content of Required Continuing Professional Education Hours).

(i) Holders of the Standard Educational Aide Certificate are exempt from the provisions of §232.850 of this title [~~relating to Number and Content of Required Continuing Professional Education Hours~~].

(j) Holders of Professional Certificates issued prior to September 1, 1999, who opt into the Standard Certificate pursuant to §232.810 of this title [~~chapter~~] (relating to Voluntary Renewal of Current Texas Educators) must complete 200 clock hours of continuing professional education every five years.

(k) Holders of Provisional Certificates issued prior to September 1, 1999, who opt into the Standard Certificate pursuant to §232.810 of this title [~~chapter~~] must complete 150 clock hours of continuing professional education every five years.

(l) An educator must complete a total of 150 or 200 clock hours of continuing professional education during each five-year renewal period unless otherwise specified in this title.

(m) Holders of a Standard Certificate in the following areas must complete 200 clock hours of continuing professional education every five years:

- (1) Supervisor;
- (2) Special Education Supervisor;
- (3) Vocational Supervisor;
- (4) Visiting Teacher; and
- (5) Special Education Visiting Teacher.

(n) Holders of a standard certificate listed in subsection (m) of this section are exempt from the continuing professional education hours stipulated in subsection (m) during the first five-year renewal period of the standard certificate. During subsequent renewal periods, the holder of such standard certificates must satisfy the most current requirements for renewal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2006.

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Patricia Hayes

Associate Commissioner, Educator Quality and P-16 Initiatives

State Board for Educator Certification

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For further information, please call: (512) 475-1497



19 TAC §§232.860, 232.870 - 232.872

The State Board for Educator Certification (SBEC) proposes amendments to §232.860 and §232.870 and new §232.871 and §232.872, relating to certificate renewal and continuing professional education requirements. The existing sections establish provisions relating to types of acceptable continuing professional education (CPE) activities (§232.860) and approval of CPE providers or sponsors (§232.870). The proposed new sections would address approval of private companies, private entities, and individuals (§232.871) and provider registration requirements (§232.872). The proposed amendments would clarify the certificate renewal requirements, the registration process and the approval of potential CPE providers.

The proposed amendment to §232.860 would change language in subsection (a) to reference new §232.872 and remove reference to §232.870. Language would be added to subsection (b) to clarify where to find in rule the list of regional accrediting agencies.

The proposed amendment to §232.870 would change the title to "Pre-Approved Professional Education Provider or Sponsor." The proposed amendment would modify subsection (a) to add the reference for the new §232.872 and subsection (a)(3) to add the reference to the definition of accredited entities. The proposed amendment would also add a new subsection (b) that outlines that a pre-approved provider is responsible for ensuring the quality and documentation requirements of CPE activities conducted on their behalf by other entities or individuals. Existing subsection (b) would be deleted and the provisions relating to approval of providers or sponsors would be moved to new §232.871 to provide clarification between pre-approved providers and private companies, private entities, and individuals. Subsections (c) - (f) would be deleted for purposes of clarity and moved to new §232.872.

Proposed new §232.871 would be added to distinguish the approval process for private companies, private entities, and individuals. The new section would clarify that if CPE activities are provided by private companies, private entities, or individuals, it is the educator's responsibility to ensure that the provider is approved by SBEC.

Proposed new §232.872 would be added to specify provider registration requirements, including the minimum information that

should be provided to educators as a record of CPE completion and documentation of all CPE activities offered, participants, dates and CPE credit hours.

The proposed amendments also re-title the chapter and subchapter, as follows. The title of 19 TAC Chapter 232 changes to "General Certification Provisions" from "General Requirements Applicable to All Certificates Issued." Subchapter "R" is changed to "B" to allow for greater use of this chapter.

Additional non-substantive, technical edits would also be made.

With the exception of technical edits, the proposed amendments and new sections reflect rule actions taken by the SBEC in 2005. The SBEC confirmed the proposed amendments and new sections at the January 2006 meeting.

Patricia Hayes, associate commissioner for educator quality and P-16 initiatives, has determined that for the first five-year period the amendments and new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments and new sections.

Ms. Hayes has determined that for each year of the first five years the amendments and new sections are in effect the public benefit anticipated as a result of enforcing the amendments and new sections will be efficient and updated rules governing the certification requirements for classroom teachers. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments and new sections. The amendments and new sections restructure and clarify existing provisions and requirements.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments and new sections submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and P-16 Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Patricia Hayes, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments and new sections are proposed under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid.

The proposed amendments and new sections implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (3).

§232.860. Types of Acceptable Continuing Professional Education (CPE) Activities.

(a) Participation in institutes, workshops, seminars, conferences, in-service or staff development activities given by an approved provider or sponsor, pursuant to §232.872 of this title (relating to Provider Registration Requirements) [§232.870 of this title (relating to Approval of Continuing Professional Education Provider or Sponsor)],

which are related to or enhance the professional knowledge and skills of the educator.

(b) Completion of undergraduate courses in the content area knowledge and skills related to the certificate(s) being renewed, graduate courses, or training programs which are taken through an accredited institution of higher education as outlined in §230.801(8) of this title (relating to Definitions).

(c) - (h) (No change.)

§232.870. Pre-Approved [Approval of Continuing] Professional Education Provider or Sponsor.

(a) The following may provide and/or sponsor continuing professional education (CPE) activities and must comply with the provisions of §232.872 of this title (relating to Provider Registration Requirements). Pre-approved providers include [this section]:

- (1) State Board for Educator Certification;
- (2) Texas Education Agency;
- (3) accredited institutions of higher education as outlined in §230.801(8) of this title (relating to Definitions);
- (4) regional education service centers;
- (5) Texas public school districts - to be creditable toward CPE requirements, school district in-service and/or staff development activities must be developed, approved, and conducted in accordance with Texas Education Code, [Chapter 21,] §21.451;
- (6) private schools, as defined by [Chapter 230, Subchapter X,] §230.801 of this title [(relating to Definitions)];
- (7) professional membership associations or non-profits that have offered professional development in Texas for at least five years and have tax-exempt status under 26 United States Code, §501(c)(3) - (6) [§501(C)(3) - (C)(6)], or a state association affiliated with a national association with tax-exempt status; and
- (8) entities approved under §232.871 of this title (relating to Approval of Private Companies, Private Entities, and Individuals) [subsection (b) of this section].

(b) If private companies, entities, and individuals provide CPE activities on behalf of a pre-approved provider, the pre-approved provider is responsible for ensuring compliance with quality and documentation requirements of §232.872 of this title.

[(b) The executive director shall develop procedures to approve as providers and/or sponsors any other person, agency, or entity seeking to offer continuing professional education activities pursuant to the requirements of this subchapter.]

[(c) The procedures adopted by the executive director must require all providers or sponsors to:]

- [(1) notify the executive director of the intent to offer CPE activities;]
- [(2) affirm compliance with all applicable statutes and rules;]
- [(3) prohibit discrimination in the provision of CPE activities to any certified educator;]
- [(4) document that each CPE activity:]
 - [(A) complies with applicable board rules;]
 - [(B) contributes to the advancement of professional knowledge and skills identified by standards adopted by the board for each certificate;]

{(C) is developed and presented by persons who are appropriately knowledgeable in the subject matter of the training being offered; and}

{(D) specifies the content under §232.850(d) of this title (relating to Number and Content of Required Continuing Professional Education Hours) and number of creditable CPE clock hours}

{(5) on a biennial or more frequent basis conduct a comprehensive, in-depth self-study to assess the CPE needs and priorities of educators served by the provider as well as the quality of the CPE activities offered.}

{(d) At the conclusion of each activity offered for CPE credit, the provider or sponsor must provide to each educator in attendance written documentation listing the content of the activity and the number of clock hours creditable toward CPE requirements. The executive director shall establish the content for a record of completion that must be utilized by all providers and sponsors.}

{(e) The executive director's failure to approve a provider or sponsor does not entitle that provider or sponsor to a contested-case hearing before the board or a person designated by the board to conduct contested-case hearings.}

{(f) The executive director shall develop procedures to receive and investigate complaints against a provider or sponsor alleging non-compliance with this section. If the investigation determines that the provider or sponsor is operating in violation of any applicable provision of state law or rule, the executive director may withdraw the approval granted under this section to the provider or sponsor.}

§232.871. Approval of Private Companies, Private Entities, and Individuals.

Private companies, private entities, and individuals who wish to provide continuing professional education (CPE) for Texas educators and administrators must register with the State Board for Educator Certification and be approved under §232.872 of this title (relating to Provider Registration Requirements).

(1) The executive director shall develop procedures to approve as providers and/or sponsors any other person, agency, or entity seeking to offer CPE activities pursuant to the requirements of this subchapter.

(2) It is the responsibility of the educator to verify the approval status of any CPE provider prior to completion of the CPE activities.

§232.872. Provider Registration Requirements.

(a) Procedures adopted by the executive director require all pre-approved and all other continuing professional education (CPE) providers or sponsors to register with the State Board for Educator Certification (SBEC) by submitting the relevant sections of the provider registration form designated by the executive director in order to accomplish any or all of the following, as applicable:

(1) notify the executive director of the intent to offer CPE activities;

(2) affirm compliance with all applicable statutes and rules;

(3) prohibit discrimination in the provision of CPE activities to any certified educator;

(4) document that each CPE activity:

(A) complies with applicable SBEC rules;

(B) contributes to the advancement of professional knowledge and skills identified by standards adopted by the SBEC for each certificate;

(C) is developed and presented by persons who are appropriately knowledgeable in the subject matter of the training being offered; and

(D) specifies the content under §232.850(d) of this title (relating to Number and Content of Required Continuing Professional Education Hours) and number of creditable CPE clock hours; and

(5) on a biennial or more frequent basis, conduct a comprehensive, in-depth self-study to assess the CPE needs and priorities of educators served by the provider as well as the quality of the CPE activities offered.

(b) At the conclusion of each activity offered for CPE credit, the provider or sponsor must provide to each educator in attendance written documentation listing, at a minimum, the provider's name and provider number, the educator's name, the date and content of the activity, and the number of clock hours that count toward satisfying CPE requirements.

(c) All providers are required to maintain a list of CPE activities provided that includes a list of attendees, the date and content of the activity, and the number of clock hours that count toward satisfying CPE requirements.

(d) The executive director's failure to approve a provider or sponsor does not entitle that provider or sponsor to a contested-case hearing before the SBEC or a person designated by the SBEC to conduct contested-case hearings.

(e) The executive director shall develop procedures to receive and investigate complaints against a provider or sponsor alleging non-compliance with this section. If the investigation determines that the provider or sponsor is operating in violation of any applicable provision of state law or rule, the executive director may withdraw the approval granted under this section to the provider or sponsor.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2006.

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Patricia Hayes

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For further information, please call: (512) 475-1497



CHAPTER 233. CATEGORIES OF CLASSROOM TEACHING CERTIFICATES

19 TAC §233.2

The State Board for Educator Certification (SBEC) proposes an amendment to §233.2, relating to categories of classroom teaching certificates. The section addresses generalist certificates. The proposed amendment would extend the timeline of the rule to the 2006 - 2007 school year, including summer school 2007.

In January 2003, the SBEC approved an amendment to 19 TAC §233.2 that allowed the holder of the Generalist: Early Childhood-Grade 4, Bilingual Generalist: Early Childhood-Grade 4, or English as a Second Language Generalist: Early Childhood-Grade 4 certificate to be assigned to teach in a self-contained classroom for Grades 5 and 6 during the school years 2003 -

2004, 2004 - 2005, and 2005 - 2006. This provision was to expire June 30, 2006.

In consideration of the continued issues regarding the availability and assignment of certified educators to teach in the hard-to-fill vacancies in Grades 5 and 6, the proposed amendment would modify subsection (c) to extend to the 2006 - 2007 school year the provision allowing school districts the flexibility of hiring teachers who hold Generalist Early Childhood-Grade 4 certificates for self-contained classrooms for Grades 5 and 6. The expiration date of the provision reflected in subsection (c)(4) would also be extended in order to include summer school programs in 2007. Minor technical edits are also made throughout the section.

Patricia Hayes, associate commissioner for educator quality and P-16 initiatives, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state government as a result of enforcing or administering the amendment. There will be fiscal implications for local government. School districts will be able to continue using teachers who are certified as Bilingual or English as a Second Language Early Childhood-Grade 4 Generalists to teach fifth and sixth graders in a self-contained classroom through 2006 - 2007. School districts may incur increased costs following the expiration of this provision if they need to hire or recertify Bilingual or ESL teachers that are not currently certified for these grade levels. It is not possible to provide a reliable estimate of these costs at this time.

Ms. Hayes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be efficient and updated rules governing the assignment of public school educators. School districts would have the flexibility of hiring teachers who hold the Generalist Early Childhood-Grade 4 certificates to teach in the hard-to-fill vacancies in self-contained fifth and sixth grade classrooms during the 2006-2007 school year, including summer school 2007. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and P-16 Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Patricia Hayes, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; and §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued.

The proposed amendment implements Texas Education Code, §21.031(a) and §21.041(b)(1) - (2).

§233.2. *Generalist.*

(a) Generalist: Early Childhood-Grade 4. The Generalist: Early Childhood-Grade 4 [EC-4] certificate may be issued no earlier than September 1, 2002. The holder of the Generalist: Early Childhood-Grade 4 [EC-4] certificate may teach the following content areas in a prekindergarten [pre-kindergarten] program, in kindergarten, and in Grades 1 - 4 [1 through 4] :

- (1) Art;
- (2) Health;
- (3) Music;
- (4) Physical Education;
- (5) English Language Arts and Reading;
- (6) Mathematics;
- (7) Science; and
- (8) Social Studies.

(b) Generalist: Grades 4-8. The Generalist: Grades 4-8 certificate may be issued no earlier than September 1, 2002. The holder of the Generalist: Grades 4-8 certificate may teach the following content areas in Grades 4-8 [4 through 8] :

- (1) English Language Arts and Reading;
- (2) Mathematics;
- (3) Science; and
- (4) Social Studies.

(c) The holder of the Generalist: Early Childhood-Grade 4, Bilingual Generalist: Early Childhood-Grade 4 [EC-4], or [and] English as a Second Language Generalist: Early Childhood-Grade 4 [EC-4] certificates may be assigned to teach the content areas specified in subsection (a) of this section [§233.2(a) of this chapter] in a self-contained classroom in Grades 5 and 6 [grades five and six] during the school years 2003-2004, 2004-2005, [and] 2005-2006, and 2006-2007.

(1) The superintendent of a school district or designee must report the assignment to the State Board for Educator Certification in a manner approved by the executive director.

(2) The superintendent or designee must affirm:

(A) the school district's efforts to recruit and employ a fully certified and qualified teacher for the assignment, including the reason for determining as unqualified each appropriately certified applicant. The district must maintain documentation of its recruiting efforts for a period of two years from the date of the making of the record : []

(B) that the holder of one of the certificates specified in this subsection will be provided with a trained mentor for the entire period of the assignment to help the person perform effectively in the assignment; and

(C) that written consent has been obtained from the holder of one of the certificates specified in this subsection prior to assignment to self-contained classes in Grades 5 or 6 [grades five or six].

(i) A teacher who refuses to consent to assignment under the provisions of this subsection may not be terminated, nonrenewed, or otherwise retaliated against because of the teacher's refusal to consent to the assignment.

(ii) A teacher's refusal to consent to the assignment under the provisions of this subsection shall not impair a school dis-

trict's right to implement a necessary reduction in force or other personnel action in accordance with school district policy.

(3) Individuals assigned to self-contained classrooms in Grades 5 and 6 [~~grades five and six~~] under the provisions of this subsection are subject to the provisions of Texas Education Code, [(TEC)] §21.057 [, ~~Parental Notification~~].

(4) The provisions of this [the] subsection shall expire on August 1, 2007 [~~June 30, 2006~~]. The provisions of this subsection include 2006-2007 summer school programs and exclude programs beginning in fall 2007.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Patricia Hayes

Associate Commissioner, Educator Quality and P-16 Initiatives
State Board for Educator Certification

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19 TAC §§233.3, 233.8, 233.10, 233.12, 233.14, 233.15

The State Board for Educator Certification (SBEC) proposes amendments to §§233.3, 233.8, 233.10, and 233.12 and new §233.14 and §233.15, relating to categories of classroom teaching certificates. The existing sections address certificates for English language arts and reading; social studies (§233.3); special education (§233.8); fine arts (§233.10); and career and technology education, not requiring experience and preparation in skills areas (§233.12). The new sections address certificates for career and technology education, requiring experience and preparation in a skill area (§233.14) and languages other than English (§233.15). The proposed amendments provide for the SBEC to issue new categories of classroom teaching certificates beginning on September 1, 2005. The superseded certificates will remain valid and the SBEC will not require educators who hold one of these certificates to obtain the corresponding new certificate. The amendments will allow for an overlap of the superseded certificates and corresponding certification exams.

Pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if the agency finds that a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice, the proposed amendments were filed as emergency adoptions taking effect immediately on January 19, 2006. The emergency adopted amendments were published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 619). The SBEC found that emergency amendments were necessary to comply with the requirements of state and federal law.

With the exception of technical edits, the proposed amendments reflect rule actions adopted by the SBEC in 2005. Specifically, the proposed amendments add the following certificates beginning September 1, 2005.

In §233.3, language is added in subsection (g) to create a certificate for journalism which allows the holder to teach all journalism courses in Grades 8-12. Language is also added in subsection (h) to create a certificate for speech which allows the holder to teach all speech courses in Grades 8-12.

In §233.8, language is added in subsection (c) to create a certificate for a teacher of the deaf and hard of hearing which allows the holder to teach at any level in a special education instructional program serving eligible students, unless otherwise specified. Language is also added in subsection (d) to create a supplemental certificate for a teacher of students with visual impairments which allows the holder to teach at any level in a special education instructional program serving eligible students, unless otherwise specified.

In §233.10, the unnumbered paragraph is now identified as subsection (a) since new subsections are added to the section. Additional non-substantive, technical edits are made in new subsection (a). Language is added in subsection (b) to create a certificate for art which allows the holder to teach art in a prekindergarten program, in kindergarten, and in Grades 1-12. Language is added in subsection (c) to create a certificate for theatre which allows the holder to teach theatre in a prekindergarten program, in kindergarten, and in Grades 1-12. Language is added in subsection (d) to create a certificate for dance which allows the holder to teach all dance courses in Grades 8-12.

In §233.12, language is added in subsection (f) to create a certificate for agricultural science and technology that allows the holder to teach all agricultural science and technology courses in Grades 6-12, including Introductory Horticulture and Introductory Agricultural Mechanics.

New §233.14 establishes requirements for individuals seeking a TExES-based career and technology education certificate that requires experience and preparation in a skill area. The new section also creates a certificate for marketing education, requiring two years of specific wage-earning experience, which allows the holder to teach all marketing education courses in Grades 8-12.

New §233.15 creates a certificate for American Sign Language which allows the holder to teach American Sign Language in a prekindergarten program, in kindergarten, and in Grades 1-12.

These amendments are proposed in conjunction with proposed amendments to rules in 19 TAC Chapter 230, Professional Educator Preparation and Certification, Subchapter G, Certification Requirements for Classroom Teachers, and proposed amendments in Chapter 230, Subchapter P, Requirements for Standard Certificates and Specialized Assignments or Programs.

Patricia Hayes, associate commissioner for educator quality and P-16 initiatives, has determined that for the first five-year period the amendments and new sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the amendments and new sections. An estimated cost of \$10,400 is anticipated for fiscal year 2006 to enhance the current certification information system to accommodate the new certificates. There may be other additional costs for fiscal year 2006 that are unknown at this time. On-going costs to maintain these enhancements for the remaining fiscal years are unknown at this time. There will be no fiscal implications for local government.

Ms. Hayes has determined that for each year of the first five years the amendments and new sections are in effect the public benefit anticipated as a result of enforcing the amendments and new sections will be that the new certificates will provide greater assurance that educator preparation is focused on the expectations for student learning as outlined in the Texas Essential Knowledge and Skills. There will be no effect on small businesses. There is anticipated economic cost to persons who are required to comply with the amendments and new sections. For

each year of the first five years the amendments and new sections are in effect, individuals seeking one of the new certificates will be required to pay a \$75 fee for issuance of the standard certificate. Individuals would also be required to pay an additional fee of \$2.00 for the purpose of recovering the cost of the Texas Online Initiative as required by 19 TAC §230.438.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and P-16 Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Patricia Hayes, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendments and new sections are proposed under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid; and §21.041(b)(6), which requires the SBEC to provide for special or restricted certification of educators, including certification of instructors of American Sign Language.

The proposed amendments and new sections implement Texas Education Code, §21.031(a) and §21.041(b)(1), (2), (3), and (6).

§233.3. *English Language Arts and Reading; Social Studies.*

(a) - (f) (No change.)

(g) Journalism: Grades 8-12. The Journalism: 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Journalism: 8-12 certificate is eligible to teach all Journalism courses in Grades 8-12.

(h) Speech: Grades 8-12. The Speech: 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Speech: 8-12 certificate is eligible to teach all Speech courses in Grades 8-12.

§233.8. *Special Education.*

(a) - (b) (No change.)

(c) Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12. The Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Teacher of the Deaf and Hard of Hearing: Early Childhood-Grade 12 certificate is eligible to teach at any level in a special education instructional program serving eligible students, unless otherwise specified in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel).

(d) Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12. The Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of

the Teacher of Students with Visual Impairments Supplemental: Early Childhood-Grade 12 certificate is eligible to teach at any level in a special education instructional program serving eligible students, unless otherwise specified in §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel).

§233.10. *Fine Arts.*

(a) Music: Early Childhood-Grade 12. The Music: Early Childhood [EC] -Grade 12 certificate may be issued no earlier than September 1, 2004. The holder of the Music: Early Childhood [EC] -Grade 12 certificate is eligible to [may] teach music in a prekindergarten [pre-kindergarten] program, in kindergarten, and in Grades [grades] 1- 12.

(b) Art: Early Childhood-Grade 12. The Art: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Art: Early Childhood-Grade 12 certificate is eligible to teach art in a prekindergarten program, in kindergarten, and in Grades 1-12.

(c) Theatre: Early Childhood-Grade 12. The Theatre: Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the Theatre: Early Childhood-Grade 12 certificate is eligible to teach theatre in a prekindergarten program, in kindergarten, and in Grades 1-12.

(d) Dance: Grades 8-12. The Dance: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Dance: Grades 8-12 certificate is eligible to teach all dance courses in Grades 8-12.

§233.12. *Career and Technology Education[-] (Certificates not requiring experience and preparation in skills areas[-]).*

(a) - (e) (No change.)

(f) Agricultural Science and Technology: Grades 6-12. The Agricultural Science and Technology: Grades 6-12 certificate may be issued no earlier than September 1, 2005. The holder of the Agricultural Science and Technology: Grades 6-12 certificate is eligible to teach all Agricultural Science and Technology courses in Grades 6-12, including Introductory Horticulture and Introductory Agricultural Mechanics.

§233.14. *Career and Technology Education (Certificates requiring experience and preparation in a skill area).*

(a) All individuals seeking a career and technology education certificate specified in this section must have prior work experience and preparation in a skill area approved by an educator preparation program approved to prepare teachers for the career and technology certificate sought in accordance with the provisions of §230.483(g) of this title (relating to Specific Requirements for Standard Career and Technology Certificates Based on Experience and Preparation).

(b) Marketing Education: Grades 8-12. The Marketing Education: Grades 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Marketing Education: Grades 8-12 certificate is eligible to teach all Marketing Education courses in Grades 8-12. The Marketing Education: Grades 8-12 certificate requires two years of wage-earning experience approved by the educator preparation program in one or more of the marketing occupations.

§233.15. *Languages Other Than English.*

American Sign Language (ASL): Early Childhood-Grade 12. The American Sign Language (ASL): Early Childhood-Grade 12 certificate may be issued no earlier than September 1, 2005. The holder of the

American Sign Language (ASL): Early Childhood-Grade 12 certificate is eligible to teach American Sign Language in a prekindergarten program, in kindergarten, and in Grades 1-12.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2006.

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Patricia Hayes

Associate Commissioner, Educator Quality and P-16 Initiatives

State Board for Educator Certification

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For further information, please call: (512) 475-1497



19 TAC §233.4

The State Board for Educator Certification (SBEC) proposes an amendment to §233.4, relating to categories of classroom teaching certificates. The section addresses certificates for mathematics and science. The proposed amendment provides for the SBEC to issue new categories of classroom teaching certificates beginning on September 1, 2005, for mathematics/physical science/engineering and chemistry.

Pursuant to §2001.034 of the Government Code, which allows a state agency to adopt an emergency rule if the agency finds that a requirement of state or federal law requires adoption of a rule on fewer than 30 days notice, the proposed amendment was filed as an emergency adoption taking effect immediately on January 19, 2006. The emergency adopted amendment was published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 628). The SBEC found that emergency amendment was necessary to comply with the requirements of state and federal law.

With the exception of technical edits, the proposed amendment reflects rule action adopted by the SBEC in 2005. Specifically, the proposed amendment adds the following new certificates beginning September 1, 2005.

In subsection (i), language is added to create a certificate for mathematics/physical science/engineering which allows the holder to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grade 8, Integrated Physics and Chemistry and all of the technology education courses in Grades 8-12, and Scientific Research and Design in Grades 9-12. The new subsection specifies required training for beginning principles of technology teachers.

In subsection (j), language is added to create a certificate for chemistry which allows the holder to teach science in Grade 8 and all chemistry courses in Grades 9-12.

Non-substantive, technical edits are made in subsections (g) and (h).

Patricia Hayes, associate commissioner for educator quality and P-16 initiatives, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for state government as a result of enforcing or administering the amendment. An estimated cost of \$10,400 is anticipated for fiscal year 2006 to enhance the current certification information system to accommodate the new certificates. There may be

other additional costs for fiscal year 2006 that are unknown at this time. On-going costs to maintain these enhancements for the remaining fiscal years are unknown at this time. There will be no fiscal implications for local government.

Ms. Hayes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be that the new certificates will provide greater assurance that educator preparation is focused on the expectations for student learning as outlined in the Texas Essential Knowledge and Skills. There will be no effect on small businesses. There is anticipated economic cost to persons who are required to comply with the amendment. For each year of the first five years the amendment is in effect, individuals seeking the new certificates will be required to pay a \$75 fee for issuance of the standard certificate. Individuals would also be required to pay an additional fee of \$2.00 for the purpose of recovering the cost of the Texas Online Initiative as required by 19 TAC §230.438.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and P-16 Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Patricia Hayes, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.041(b)(3), which requires the SBEC to specify the period for which each class of educator certificate is valid.

The proposed amendment implements Texas Education Code, §21.031(a) and §21.041(b)(1), (2), and (3).

§233.4. *Mathematics; Science.*

(a) - (f) (No change.)

(g) Physical Science: Grades 8-12. The Physical Science: 8-12 certificate may be issued no earlier than September 1, 2002. The holder of the Physical Science: 8-12 certificate is eligible to [may] teach science in Grade 8 and all physics and chemistry courses, including Integrated Physics and Chemistry, Principles of Technology I and II, and Scientific Research and Design , in Grades 9 through 12. All teachers assigned to teach Principles of Technology I and II shall participate in a Texas Education Agency approved workshop for beginning principles of technology teachers prior to teaching the course.

(h) Physics/Mathematics: Grades 8-12. The Physics/Mathematics: 8-12 certificate may be issued no earlier than [that] September 1, 2004. The holder of the Physics/Mathematics: 8-12 certificate is eligible to [may] teach mathematics in Grade [grade] 8 and all mathematics courses in Grades [grades] 9-12. The holder may also teach science in Grade [grade] 8, and all physics courses, Principles of Tech-

nology I and II, and Scientific Research and Design in Grades [grades] 9-12. All teachers assigned to teach Principles of Technology I and II shall participate in a Texas Education Agency approved workshop for beginning principles of technology teachers prior to teaching the course.

(i) Mathematics/Physical Science/Engineering: Grades 8-12. The Mathematics/Physical Science/Engineering: 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Mathematics/Physical Science/Engineering: 8-12 certificate is eligible to teach mathematics in Grade 8 and all mathematics courses in Grades 9-12. The holder is also eligible to teach science in Grade 8, Integrated Physics and Chemistry, and all of the Technology Education courses, including Principles of Technology I and II, in Grades 8-12, and Scientific Research and Design in Grades 9-12. All teachers assigned to teach Principles of Technology I and II shall participate in a Texas Education Agency-approved workshop for beginning principles of technology teachers prior to teaching the course.

(j) Chemistry: Grades 8-12. The Chemistry: 8-12 certificate may be issued no earlier than September 1, 2005. The holder of the Chemistry: 8-12 certificate is eligible to teach science in Grade 8 and all chemistry courses in Grades 9-12.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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CHAPTER 239. STUDENT SERVICES

CERTIFICATES

SUBCHAPTER E. MASTER TEACHER

CERTIFICATES

19 TAC §239.104

The State Board for Educator Certification (SBEC) proposes new §239.104, concerning the master teacher certificates. The new section would establish certification requirements for master science teachers to ensure that there are teachers with special training to mentor other teachers and work with students in order to improve student science performance.

Proposed new §239.104 would create master science teacher certificates to teach science in early childhood programs through Grade 4, Grades 4-8, and Grades 8-12. The proposed new section includes eligibility criteria and addresses training requirements.

Additional non-substantive, technical edits would also be made to this section.

With the exception of the technical edits, the proposed new section reflects action taken by the SBEC in 2005. The SBEC confirmed action on the proposed new section at its January 2006 meeting.

Patricia Hayes, associate commissioner for educator quality and P-16 initiatives, has determined that for the first five-year period the new section is in effect there will be fiscal implications for state government as a result of enforcing or administering the new section. The primary technology costs for this program were incurred during fiscal year 2005. An estimated cost of \$10,400 is anticipated for fiscal year 2006 to maintain this system enhancement. There may be other additional costs for fiscal year 2006 that are unknown at this time. On-going costs to maintain this system enhancement for the remaining fiscal years are unknown at this time. There will be no fiscal implications for local government.

Ms. Hayes has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be that students would benefit from public schools having certified master science teachers to enhance instruction in science. There will be no effect on small businesses. There is anticipated economic cost to persons who are required to comply with the new section. For each year of the first five years the new section is in effect, individuals seeking the new certificates will be required to pay a \$75 fee for issuance of the certificate. Individuals would also be required to pay an additional fee of \$2.00 for the purpose of recovering the cost of the Texas Online Initiative as required by 19 TAC §230.438.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and P-16 Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Patricia Hayes, not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(2), which requires the SBEC to specify the classes of certificates to be issued; and §21.0484, which requires the SBEC to establish master science teacher certificates to teach at elementary school, middle school and high school grade levels.

The proposed new section implements Texas Education Code, §21.031(a), §21.041(b)(1) and (2), and §21.0484.

§239.104. Master Science Teacher Certification.

(a) To ensure that there are teachers with special training to work with other teachers and with students in order to improve student science performance, the State Board for Educator Certification (SBEC) shall establish:

(1) a master science teacher certificate to teach science in early childhood programs through Grade 4;

(2) a master science teacher certificate to teach science in Grades 4-8; and

(3) a master science teacher certificate to teach science in Grades 8-12.

(b) To be eligible for a master science teacher certificate, a person must:

(1) hold a teaching certificate issued under this title;

(2) have at least three years of teaching experience;

(3) satisfactorily complete a knowledge-based course of instruction through a preparation program approved by the SBEC on the science of teaching children science that includes training in science instruction and professional peer mentoring techniques that, through scientific testing, have been proven effective;

(4) satisfactorily complete a field-based practicum prescribed by a preparation program approved by the SBEC;

(5) perform satisfactorily on the appropriate master science teacher certification examination prescribed by the SBEC; and

(6) satisfy any other requirement generally applicable to certificates issued under this title.

(c) The course of instruction prescribed under subsection (b)(3) of this section shall be developed by the SBEC in consultation with science faculty members at institutions of higher education.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Patricia Hayes

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CHAPTER 249. DISCIPLINARY PROCEEDINGS, SANCTIONS, AND CONTESTED CASES INCLUDING ENFORCEMENT OF THE EDUCATOR'S CODE OF ETHICS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §249.2

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Board for Educator Certification or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The State Board for Educator Certification (SBEC) proposes the repeal of §249.2, relating to the sunset provision for disciplinary proceedings, sanctions, and contested cases including enforcement of the educator's code of ethics. The section establishes a sunset provision for 19 TAC Chapter 249 four years from its initial effective date unless readopted or amended by the SBEC before then. The proposed repeal would remove this sunset provision from rule.

The rules in 19 TAC Chapter 249 were adopted with an effective date of March 31, 1999 (24 TexReg 2304). The review of 19

TAC Chapter 249, including §249.2, was completed in January 2001. 19 TAC § 249.2 was intended to fulfill the requirement in Government Code, §2001.039, that state agencies periodically review their rules. However, the Government Code provision requiring the periodic review of the agency rules did not mandate or authorize the automatic expiration of the rules.

The Government Code, §2001.039, does require state agencies to periodically review their rules, but the Government Code does not provide that agency rules that do not go through the review process will expire. In fact, Government Code, §2001.040, provides a procedure for addressing an agency's failure to follow certain procedural requirements, for a rule proposal and adoption, found in §2001.0225 through §2001.034.

Government Code, §2001.039, does not mandate or authorize the automatic expiration of agency rules in the event that the rules are not readopted within the four-year rule review cycle contemplated by §2001.039. Accordingly, the provision in 19 TAC §249.2 has no effect on the expiration of the rules in 19 TAC Chapter 249 because Government Code, §2001.039, does not provide sufficient authority to adopt this type of sunset provision into rule. Such a provision is unenforceable due to insufficient statutory basis to adopt. However, legal counsel has advised the SBEC to re-affirm all the decisions and orders issued pursuant to 19 TAC Chapter 249 in order to clarify the SBEC's intent that 19 TAC §249.2 operates only as a reference to the review of rules required under the Texas Government Code, §2001.039.

At its March 3, 2006, meeting, the SBEC took action to incorporate the rule review provisions from the Government Code, §2001.039, into the SBEC operating procedures. This implements the SBEC's intent to review all its rules to ensure that there is current statutory authority for each agency rule, in accordance with Government Code requirements. The SBEC also voted to reaffirm any actions taken under 19 TAC Chapter 249, including any actions taken until the effective date of the repeal of 19 TAC §249.2, in order to clarify the SBEC's intent that 19 TAC §249.2 operates only as a reference to the review of rules required under the Texas Government Code, §2001.039.

Patricia Hayes, associate commissioner for educator quality and P-16 initiatives, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Hayes has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be efficient and updated rules governing disciplinary proceedings, sanctions, and contested cases and enforcement of the educator's code of ethics. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Department of Educator Quality and P-16 Initiatives, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, Attention: Patricia Hayes, not more than 15 calendar

days after notice of the proposal has been published in the *Texas Register*.

The repeal is proposed under the following Texas Education Code sections: §21.031(a), which vests the SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; §21.041(b)(7), which requires the SBEC to provide for disciplinary proceedings, including the suspension or revocation of an educator certificate, as provided by Chapter 2001, Government Code; and §21.041(b)(8), which requires the SBEC to provide for the adoption, amendment, and enforcement of an educator's code of ethics.

The proposed repeal implements Texas Education Code, §21.031(a) and §21.041(b)(1), (7), and (8).

§249.2. *Sunset Provision.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2006.

TRD-200601702

Patricia Hayes

Associate Commissioner, Educator Quality and P-16 Initiatives

State Board for Educator Certification

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 139. ENFORCEMENT SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers proposes an amendment to §139.35, relating to Sanctions and Penalties. The proposed amendments update the citations in the Sanction and Penalty table resulting from proposed changes to §137.77, Firm Registration Compliance. The proposed changes to §137.77 were published for comment in the issue of the March 17, 2006, issue of the *Texas Register* (31 Tex Reg 1870)

The proposed rule change updates citations in the Sanction and Penalty table in relation to proposed changes to §137.77, concerning removal of the 30-day amnesty period for firm registration.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended.

Mr. Kinney has determined that there is no additional cost to the agency or to licensees. Because the number of violations in any period is unknown, the specific impact on individuals required to comply with the proposed amendment cannot be assessed. However, more firms will be subject to possible enforcement action, including an administrative penalty, since the 30-day amnesty period will no longer be available. There is no effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is better protection from unqualified and unregistered engineering firms.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

No other statutes, articles or codes are affected by the proposed amendment.

§139.35. *Sanctions and Penalties.*

(a) - (c) (No change.)

(d) The following is a table of suggested sanctions that may be imposed against a person or business entity for violations of the Act or board rules involving firm/sole proprietorship registration:

Figure: 22 TAC §139.35(d)

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2006.

TRD-200601690

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 440-7723



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

The Texas State Board of Pharmacy proposes the repeal of §281.9 concerning Rules Governing Disciplinary Actions and simultaneously proposes new §281.9 concerning Grounds for Discipline for a Pharmacy Technician or a Pharmacy Technician Trainee. The new rule, if adopted, provides a more organized Chapter 281 regarding disciplinary guidelines and outlines the

grounds for discipline for pharmacy technicians and pharmacy technician trainees.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure pharmacy technicians and pharmacy technician trainees are disciplined appropriately. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed repeal and proposed new rules may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2006.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.9

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas State Board of Pharmacy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the repeal: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.9. *Rules Governing Disciplinary Actions.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601659

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 305-8037



22 TAC §281.9

The new rule is proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the new rule: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.9. Grounds for Discipline for a Pharmacy Technician or a Pharmacy Technician Trainee.

(a) For the purposes of the Act, §568.003(a)(2), the term "gross immorality" shall include, but not be limited to:

(1) conduct which is willful, flagrant, or shameless, and which shows a moral indifference to standards of the community;

(2) engaging in an act which is a felony; or

(3) engaging in an act that constitutes sexually deviant behavior.

(b) For the purposes of the Act, §568.003(a)(3), the terms "fraud," "deceit," or "misrepresentation" shall apply to an individual seeking a registration as a pharmacy technician, as well as making an application to any entity that certifies or registers pharmacy technicians, and shall be defined as follows:

(1) "Fraud" means an intentional perversion of truth for the purpose of inducing the board in reliance upon it to issue a registration; a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive the board.

(2) "Deceit" means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud the board.

(3) "Misrepresentation" means a manifestation by words or other conduct which is a false representation of a matter of fact.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601660

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 305-8037



SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE

22 TAC §281.20, §281.57

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Pharmacy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Pharmacy proposes the repeal of §281.20 concerning Criminal Convictions and §281.57 concerning Disciplinary Guidelines. The proposed repeal, if adopted, provides a more organized Chapter 281 regarding disciplinary guidelines. Section 281.20 is proposed as new §281.63 and §281.57(a) and §281.57(b) are proposed as new §281.60(a) and §281.60(b) and §281.57(c) and (d) are proposed as new §281.62(a) and §281.62(b) in Subchapter C of Chapter 281. The new proposed rules are published elsewhere in this edition of the *Texas Register*.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there

will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure more organized rules regarding disciplinary guidelines. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed repeal may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2006.

The repeal is proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the repeal: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.20. *Criminal Convictions.*

§281.57. *Disciplinary Guidelines.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601661

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 305-8037



SUBCHAPTER C. DISCIPLINARY GUIDELINES

22 TAC §§281.60 - 281.65

The Texas State Board of Pharmacy proposes new §281.60 concerning General Guidelines, §281.61 concerning Definitions of Discipline authorized, §281.62 concerning Aggravating and Mitigating Factors, §281.63 concerning Considerations for Criminal Offenses, §281.64 concerning Sanctions for Criminal Offenses, and §281.65 concerning Schedule of Administrative Penalties. New §281.60 provides the general guidelines in disciplinary matters and includes language previously found in §281.57(a) and §281.57(b). New §281.61 provides the definitions of types of discipline authorized and was previously found in §281.9(a) concerning Rules Governing Disciplinary Actions which is proposed as a repealed rule published elsewhere in this edition of the *Texas Register*. New §281.62 provides the aggravating and mitigating factors for consideration by the Board to merit a more severe or more restrictive disciplinary action and was previously found in §281.57(c) and §281.57(d) concerning Disciplinary Guidelines which is proposed as a repealed rule

published elsewhere in this edition of the *Texas Register*. New §281.63 provides guidelines on the eligibility of persons with criminal backgrounds to obtain a license or registration and on the disciplinary actions taken by the Board and was previously found in §281.20 concerning Criminal Convictions which is proposed as a repealed rule published elsewhere in this edition of the *Texas Register*. New §281.64 provides the sanctions for applicants with criminal offenses. New §281.65 provides the schedule of administrative penalties and was previously found in §281.9(b) which is proposed as a repealed rule published elsewhere in this edition of the *Texas Register*.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure more organized rules regarding disciplinary guidelines. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed new rules may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2006.

The new rules are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the rules: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.60. *General Guidance.*

(a) This subchapter is promulgated to:

(1) promote consistency and guidance in the exercise of sound discretion by the agency in licensure and disciplinary matters;

(2) provide notice as to the types of conduct that constitute violations of the Act and as to the disciplinary action that may be imposed; and

(3) provide a framework of analysis for administrative law judges in making recommendations in licensure and disciplinary matters.

(b) Board's role. The board shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Act. The board welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the board is not bound by such recommendations. A sanction should be consistent with sanctions imposed in other similar cases and should reflect the board's determination of the seriousness of the violation and the sanction required to deter future violations. A determination of the appropriate sanction is reserved to the board. The appropriate sanction is not a proper finding of fact or conclusion of law. This subchapter shall be construed and applied so as to preserve board member discretion in the imposition of sanctions and remedial measures pursuant to the Act's provisions related to types of discipline

and administrative penalties. This subchapter shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise proscribed by statute and board rule.

(c) Purpose of guidelines. These guidelines are designed to provide guidance in assessing sanctions for violations of the Act. The ultimate purpose of disciplinary sanctions is to protect and inform the public, deter future violations, offer opportunities for rehabilitation, if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) The standard sanctions outlined in the subchapter apply to cases involving a single violation of the Act, and in which there are no aggravating or mitigating factors that apply. The board may impose more restrictive sanctions when there are multiple violations of the Act. The board may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors listed in section 281.62 (relating to Aggravating and Mitigating Factors) that are found to apply in a particular case.

(2) The standard and minimum sanctions outlined in the subchapter are applicable to first time violators. The board shall consider revoking the person's license if the person is a repeat offender.

(3) The maximum sanction in all cases is revocation of the licensee's license, which may be accompanied by an administrative penalty of up to \$5,000 per violation. Each day the violation continues is a separate violation.

(4) Each statutory violation constitutes a separate offense, even if arising out of a single act.

§281.61. Definitions of Discipline Authorized.

For the purpose of the Act, §565.051 and §568.0035:

(1) "Probation" means the suspension of a sanction imposed against a license during good behavior, for a term and under conditions as determined by the board.

(2) "Reprimand" means a public and formal censure against a license.

(3) "Restrict" means to limit, confine, abridge, narrow, or restrain a license for a term and under conditions determined by the board.

(4) "Revoke" means a license is void and may not be reissued; provided, however, upon the expiration of 12 months from and after the effective date of the order revoking a pharmacist license, application may be made to the board by the former licensee for the issuance of a license upon the successful completion of any examination required by the board.

(5) "Suspend" means a license is of no further force and effect for a period of time as determined by the board.

(6) "Retire" means a license has been withdrawn and is of no further force and effect.

§281.62. Aggravating and Mitigating Factors.

(a) Aggravation. The following may be considered as aggravating factors so as to merit more severe or more restrictive action by the board:

- (1) patient harm and the severity of patient harm;
- (2) economic harm to any individual or entity and the severity of such harm;
- (3) environmental harm and severity of such harm;
- (4) increased potential for harm to the public;

(5) attempted concealment of misconduct;

(6) premeditated misconduct;

(7) intentional misconduct;

(8) motive;

(9) prior misconduct of a similar or related nature;

(10) disciplinary history;

(11) prior written warnings or written admonishments from any government agency or official regarding statutes or regulations pertaining to the misconduct;

(12) violation of a board order;

(13) failure to implement remedial measures to correct or mitigate harm from the misconduct;

(14) lack of rehabilitative potential or likelihood for future misconduct of a similar nature; and

(15) relevant circumstances increasing the seriousness of the misconduct.

(b) Extenuation and Mitigation. The following may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive action by the board:

(1) absence of patient harm;

(2) absence of economic harm to any individual or entity;

(3) absence of environmental harm;

(4) absence of potential harm to the public;

(5) self-reported and voluntary admissions of misconduct;

(6) absence of premeditation to commit misconduct;

(7) absence of intent to commit misconduct;

(8) motive;

(9) absence of prior misconduct of a similar or related nature;

(10) absence of a disciplinary history;

(11) implementation of remedial measures to correct or mitigate harm from the misconduct;

(12) rehabilitative potential;

(13) prior community service and present value to the community;

(14) relevant circumstances reducing the seriousness of the misconduct; and

(15) relevant circumstances lessening responsibility for the misconduct.

§281.63. Considerations for Criminal Offenses.

(a) The purpose of this section is to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain a license or registration from the board and on the disciplinary actions taken by the board. The section applies to criminal convictions and to deferred adjudication community supervisions or deferred dispositions, as authorized by the Act, for all types of licenses and registrations.

(b) The board may suspend, revoke, or impose other authorized disciplinary action on a current license or registration, disqualify a person from receiving a license or registration, or deny to a person the opportunity to be examined for a license or registration because of

a person's conviction or deferred adjudication of a crime that directly relates to the duties and responsibilities of a licensee, a registrant, or of an owner of a pharmacy. This subsection applies to persons who are not imprisoned at the time the board considers the conviction or deferred adjudication.

(c) The board shall revoke a license or registration upon the imprisonment of the licensee, the registrant, or the owner of a pharmacy following a felony conviction or deferred adjudication, or revocation of felony community supervision, parole, or mandatory supervision.

(d) A person in prison is not eligible for a license or registration.

(e) An applicant for a license or registration from the board shall disclose in writing to the board any conviction or deferred adjudication against him or her at the time of application. A current licensee or registrant shall disclose in writing to the board any conviction or deferred adjudication against him or her at the time of renewal.

(f) In considering whether a criminal conviction or deferred adjudication directly relates to the occupation of a licensee or a registrant, or the operation of a pharmacy, the board shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license or registration to engage in the occupation of the licensee or registrant, or the operation of a pharmacy;

(3) the extent to which a license or registration might afford the licensee or registrant an opportunity to repeat the criminal activity in which the person had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensee or registrant.

(g) In reaching a decision regarding the type of disciplinary sanction to impose on a license or registration, the board shall also determine the person's fitness to perform the duties and discharge the responsibilities of a licensee or registrant based on:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from:

(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff and chief of police in the community where the person resides; and

(C) any other persons in contact with the convicted person.

(h) A person with a conviction or deferred adjudication shall:

(1) to the extent possible, secure and provide to the board the recommendations of the prosecution, law enforcement, and correctional authorities specified in subsection (g)(6) of this section;

(2) cooperate with the board by providing the information required by this section, including proof that he or she has:

(A) maintained a record of steady employment, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction or deferred adjudication and/or release from imprisonment;

(B) supported his or her dependents, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction or deferred adjudication and/or release from imprisonment, and a letter from the spouse or other parent;

(C) maintained a record of good conduct as evidenced by letters of recommendation, absence of other criminal activity or documentation of community service since conviction or deferred adjudication; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, as evidenced by certified copies of a court release or other documentation from the court system that all monies have been paid.

(i) The following crimes relate to board licensees or registrants. The commission of each indicates an inability or a tendency for the person to be unable to perform or to be unfit for licensure or registration, because violation of such crimes indicates a lack of integrity and respect for one's fellow human being and the community at large. The direct relationship to a license or registration is presumed when the crime occurs in connection with the practice of pharmacy or the operation of a pharmacy.

(1) practicing or operating a pharmacy without a license or registration and other violations of the Pharmacy Act;

(2) deceptive business practices;

(3) medicare or medicaid fraud;

(4) a misdemeanor or felony offense involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child;

(H) injury to an elderly person;

(I) child abuse or neglect;

(J) tampering with a governmental record;

(K) forgery;

(L) perjury;

(M) failure to report abuse;

(N) bribery;

(O) harassment;

(P) insurance claim fraud;

(Q) solicitation of professional employment under the Penal Code §38.12(d) or Occupations Code, Chapter 102; or

(R) mail fraud;

(5) delivery, possession, manufacture, or use of, or dispensing or prescribing a controlled substance, dangerous drug, or narcotic; or

(6) other misdemeanors or felonies, including violations of the Penal Code, Titles 4, 5, 6, 7, 8, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or registrant, or to be unfit for licensure or registration, if action by the board will promote the intent of the Pharmacy Act, board rules including this chapter, and Occupations Code, Chapter 53.

§281.64. Sanctions for Applicants with Criminal Offenses.

(a) The guidelines for disciplinary sanctions apply to criminal convictions and to deferred adjudication community supervisions or deferred dispositions, as authorized by the Act, for applicants for all types of licenses and registrations issued by the board. The board considers criminal behavior to be highly relevant to an individual's fitness to engage in pharmacy practice.

(b) The sanctions imposed by the guidelines can be used in conjunction with other types of disciplinary actions, including administrative penalties, as outlined in this section.

(c) The following sanctions apply to applicants with the criminal offenses described below:

(1) Criminal offenses which require the individual to register with the Department of Public Safety as a sex offender under Chapter 62, Code of Criminal Procedure - denial;

(2) Felony offenses:

(A) Drug-related offenses, such as those listed in Chapter 481 or 483, Health and Safety Code:

(i) Offenses involving manufacture, delivery, or possession with intent to deliver:

(I) Currently on probation - denial;

(II) 0-5 years since conviction - denial;

(III) 6-10 years since conviction - denial;

(IV) 11-20 years since conviction - denial;

(V) Over 20 years since conviction - 5 years proba-

tion;

(ii) Offenses involving possession, fraud, or theft of drugs:

(I) Currently on probation - denial;

(II) 0-5 years since conviction - evaluation by a mental health professional indicating the individual is safe to engage in pharmacy practice and 5 years probation;

(III) 6-10 years since conviction - evaluation by a mental health professional indicating the individual is safe to engage in pharmacy practice and 3 years probation;

(IV) 11-20 years since conviction - 2 years proba-

tion;

(V) Over 20 years since conviction - 1 year proba-

tion;

(B) Offenses involving sexual contact or violent acts, or offenses considered to be felonies of the first degree under the Texas Penal Code:

(i) Currently on probation - denial;

(ii) 0-5 years since conviction - denial;

(iii) 6-10 years since conviction - denial;

(iv) 11-20 years since conviction - 5 years probation;

(v) Over 20 years since conviction - 1 year proba-

tion;

(C) Other felony offenses:

(i) Currently on probation - denial;

(ii) 0-5 years since conviction - 5 years probation;

(iii) 6-10 years since conviction - 3 years probation;

(iv) 11-20 years since conviction - 2 years probation;

(v) Over 20 years since conviction - 1 year proba-

tion;

(3) Misdemeanor offenses:

(A) Drug-related offenses, such as those listed in Chapter 481 or 483, Health and Safety Code:

(i) Offenses involving manufacture, delivery, or possession with intent to deliver:

(I) 0-5 years since conviction - denial;

(II) 6-10 years since conviction - denial;

(III) Over 10 years since conviction - 5 years proba-

tion;

(ii) Offenses involving possession, fraud, or theft of drugs:

(I) 0-5 years since conviction - evaluation by a mental health professional indicating the individual is safe to engage in pharmacy practice and 5 years probation;

(II) 6-10 years since conviction - evaluation by a mental health professional indicating the individual is safe to engage in pharmacy practice and 3 years probation;

(B) Intoxication and alcoholic beverage offenses if two occurred in the previous ten years

(i) 0-5 years since conviction - evaluation by a mental health professional indicating the individual is safe to engage in pharmacy practice and 5 years probation;

(ii) 6-10 years since conviction - evaluation by a mental health professional indicating the individual is safe to engage in pharmacy practice and 3 years probation;

(C) Other misdemeanor offenses involving moral turpitude:

(i) 0-5 years since conviction - 2 years probation;

(ii) 6-10 years since conviction - reprimand;

(d) When an applicant has multiple criminal offenses or other violations, the board shall consider imposing additional more severe types of disciplinary sanctions, as deemed necessary.

§281.65. Schedule of administrative penalties.

In disciplinary matters, the board may assess an administrative penalty in addition to any other disciplinary action in the circumstances and amounts as follows:

(1) The following violations by a pharmacist may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

- (A) failure to provide patient counseling: \$1,000;
- (B) failure to conduct a drug regimen review or inappropriate drug regimen reviews provided by §291.33(c)(2)(A): \$1,000;
- (C) failure to clarify a prescription with the prescriber: \$1,000;
- (D) failure to properly supervise or improperly delegating a duty to a pharmacy technician: \$1,000;
- (E) failure to identify the dispensing pharmacist on required pharmacy records: \$500;
- (F) failure to maintain records of prescriptions: \$500;
- (G) failure to respond or failure to provide all requested records within the time specified in a board audit of continuing education records: \$100 per hour of continuing education credit not provided;
- (H) failure to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: \$1,000;
- (I) shortages of prescription drugs following an accountability audit: up to \$5,000;
- (J) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to \$5,000;
- (K) dispensing unauthorized prescriptions: up to \$5,000;
- (L) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to \$5,000;
- (M) violating the reporting provisions of an Order of the Board: \$500 - \$1,000;
- (N) failure to report or to assure the report of a malpractice claim: up to \$1,000;
- (O) failure to respond within the time specified on a warning notice to such warning notice issued as a result of a compliance inspection or responding to a warning notice as a result of a compliance inspection in a manner that is false or misleading: up to \$1,000;
- (P) practicing pharmacy with a delinquent license: \$250 - \$1,000;
- (Q) operating a pharmacy with a delinquent license: \$1,000 - \$5,000;
- (R) allowing an individual to perform the duties of a pharmacy technician without a valid registration: \$250 - \$1,000;
- (S) failure to comply with the requirements of the Official Prescription Program: up to \$1,000;
- (T) aiding and abetting the unlicensed practice of pharmacy: up to \$5,000;

(U) criminal violations: up to \$5,000;

(V) unauthorized substitutions: \$1,000;

(W) insurance or welfare fraud: up to \$5,000;

(X) sale, purchase, or trade or offer to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: up to \$1,000;

(Y) sale, purchase, or trade or offer to sell, purchase, or trade of prescription drug samples as provided by §281.7 (a)(27) of this title (relating to Grounds for Discipline for a Pharmacist License): up to \$1,000;

(Z) failure to keep, maintain or furnish an annual inventory as required by §291.17: \$1,000;

(AA) failure to obtain training on the preparation of sterile pharmaceutical compounding: \$1,000;

(BB) failure to maintain the confidentiality of prescription records: \$1,000 - \$5,000;

(CC) failure to inform the Board of a change of name, address or employment within 10 days of such change: \$250 - \$500.

(2) The following violations by a pharmacy may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

- (A) failure to provide patient counseling: \$1,500;
- (B) failure to conduct a drug regimen review or inappropriate drug regimen reviews provided by §291.33(c)(2)(A): \$1,500;
- (C) failure to clarify a prescription with the prescriber: \$1,500;
- (D) failure to properly supervise or improperly delegating a duty to a pharmacy technician: \$1,500;
- (E) failure to identify the dispensing pharmacist on required pharmacy records: \$500;
- (F) failure to maintain records of prescriptions: \$500;
- (G) failure to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: \$1,000;
- (H) shortages of prescription drugs following an accountability audit: up to \$5,000;
- (I) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to \$5,000;
- (J) dispensing unauthorized prescriptions: up to \$5,000;
- (K) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to \$5,000;
- (L) violating the reporting provisions of an Order of the Board: \$1,000 - \$5,000;
- (M) failure to report or to assure the report of a malpractice claim: up to \$1,000;
- (N) failure to respond within the time specified on a warning notice to such warning notice issued as a result of a compliance

inspection or responding to a warning notice as a result of a compliance inspection in a manner that is false or misleading: up to \$1,000;

(O) allowing a pharmacist to practicing pharmacy with a delinquent license: \$250 - \$1,000;

(P) operating a pharmacy with a delinquent license: \$1,000 - \$5,000;

(Q) allowing an individual to perform the duties of a pharmacy technician without a valid registration: \$250 - \$1,000;

(R) failure to comply with the requirements of the Official Prescription Program: up to \$1,000;

(S) aiding and abetting the unlicensed practice of pharmacy: up to \$5,000;

(T) criminal violations: up to \$5,000;

(U) unauthorized substitutions: \$1,000;

(V) insurance or welfare fraud: up to \$5,000;

(W) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: up to \$1,000;

(X) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of prescription drug samples as provided by §281.8 (b)(2) of this title (relating to Grounds for Discipline for a Pharmacy License): up to \$1,000;

(Y) failure to keep, maintain or furnish an annual inventory as required by §291.17: \$1,000;

(Z) failure to obtain training on the preparation of sterile pharmaceutical compounding: \$1,500;

(AA) failure to maintain the confidentiality of prescription records: \$1,000 - \$5,000;

(BB) failure to inform the board of a change of name, address or employment within 10 days of such change: \$250 - \$500.

(3) The following violations by a pharmacy technician may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:

(A) failure to respond or failure to provide all requested records within the time specified in a board audit of continuing education records: \$30 per hour of continuing education credit not provided;

(B) failure to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: \$500;

(C) shortages of prescription drugs following an accountability audit: up to \$5,000;

(D) violating the reporting provisions of an Order of the Board: \$250 - \$500;

(E) failure to report or to assure the report of a malpractice claim: up to \$500;

(F) performing the duties of a pharmacy technician without a valid registration: \$250 - \$1,000;

(G) criminal violations: up to \$5,000;

(H) insurance or welfare fraud: up to \$5,000;

(I) failure to obtain training on the preparation of sterile pharmaceutical compounding: \$1,000;

(J) failure to maintain the confidentiality of prescription records: \$1,000 - \$5,000;

(K) failure to inform the board of a change of name, address or employment within 10 days of such change: \$100 - \$250.

(4) Any of the violations listed in this section may be appropriate for disposition by the administrative penalties in this section in conjunction with any other penalties in §281.61 of this chapter.

(5) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty or fine.

(6) The amount, to the extent possible, shall be based on:

(A) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited act, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(B) the economic harm to property or the environment caused by the violation;

(C) the history of previous violations;

(D) the amount necessary to deter a future violation;

(E) efforts to correct the violation; and

(F) and other matter that justice may require.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601662

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 305-8037



SUBCHAPTER C. RULEMAKING

22 TAC §§281.71 - 281.76

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Pharmacy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Pharmacy proposes the repeal of §281.71, concerning Prerequisites to Adopting, Repealing, or Amending Rules, §281.72, concerning Effective Date of Rules, §281.73, concerning Petition for Adoption of Rules, §281.74, concerning President to Preside, §281.75, concerning Amendments and the Repeal of Conflicting Rules, and §281.76, concerning Effective Date. The proposed repeal, if adopted, provides a more organized Chapter 281 regarding disciplinary guidelines. The repealed rules are proposed as new rules in Subchapter D of Chapter 281 and are published elsewhere in this edition of the *Texas Register*.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there

will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure more organized rules regarding disciplinary guidelines. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed repeal may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2006.

The repeal is proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the repeal: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.71. *Prerequisites to Adopting, Repealing, or Amending Rules.*

§281.72. *Effective Date of Rules.*

§281.73. *Petition for Adoption of Rules.*

§281.74. *President To President.*

§281.75. *Amendments and the Repeal of Conflicting Rules.*

§281.76. *Effective Date.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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SUBCHAPTER D. RULEMAKING

22 TAC §§281.71 - 281.76

The Texas State Board of Pharmacy proposes new §281.71, concerning Prerequisites to Adopting, Repealing, or Amending Rules, §281.72, concerning Effective Date of Rules, §281.73, concerning Petition for Adoption of Rules, §281.74, concerning President to President, §281.75, concerning Amendments and the Repeal of Conflicting Rules, and §281.76, concerning Effective Date. The proposed new rules, if adopted, provide a more organized Chapter 281 regarding disciplinary guidelines. New §§281.71 - 281.76 were previously found in Subchapter C of Chapter 281. The Board also proposes the change of the name of the Subchapter from "Miscellaneous" to "Rulemaking."

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there

will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure more organized rules regarding disciplinary guidelines. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed new rules may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2006.

The new rules are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.71. *Prerequisites to Adopting, Repealing, or Amending Rules.*

(a) All rules shall be adopted, repealed, or amended in accordance with the Administrative Procedure Act.

(b) Prior to adopting, repealing, or amending any rule, the board or its designated representative shall give at least 30 days notice of its intended action. Notice of the proposed rule shall be filed with the secretary of state for publication in the *Texas Register* and a copy of the notice delivered to the lieutenant governor and speaker. The notice shall include the following:

(1) A brief explanation of the proposed rule.

(2) The text of the proposed rule, except any portion omitted as provided in §2002.014 of the APA, prepared in a manner to indicate the words to be added or deleted from the current text, if any.

(3) A statement of the statutory or other authority under which the rule is proposed to be promulgated, including a concise explanation of the particular statutory or other provisions under which the rule is proposed, and a certification that the proposed rule has been reviewed by legal counsel and found to be within the agency's authority to adopt.

(4) A fiscal note showing the name and title of the officer or employee responsible for preparing or approving it and stating for each year for the first five years that the rule will be in effect:

(A) the additional estimated cost to the state and to local governments expected as a result of enforcing or administering the rule;

(B) estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

(C) estimated loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule; and

(D) if applicable, that enforcing or administering the rule will have no foreseeable implication in any of the preceding respects.

(5) A public benefit-cost note showing the name and title of the officer or employee responsible for preparing or approving it and stating for each year for the first five years that the rule will be in effect:

(A) the public benefits to be expected as a result of adoption of the proposed rule; and

(B) the probable economic cost to persons who are required to comply with the rule.

(6) Request for comments on the proposed rule from any interested person.

(7) Any other statement required by law.

(c) Any notice becomes effective as notice when published in the *Texas Register*. The notice shall be mailed to all persons who have made timely written requests of the agency for advance notice of its rulemaking proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted. Prior to the adoption, repeal, or amendment of any rule, the board shall afford all interested persons reasonable opportunity to submit data, views, or arguments. Such data, views, or arguments may, at the discretion of the board, be submitted either orally or in writing. A public hearing shall be held prior to the adoption of any rule if required by law or this chapter. The board shall consider fully all written and oral submissions concerning the proposed rule. On adoption of a rule, the board, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption.

(d) If the board finds that imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days notice and states in writing its reasons for that finding, the board may proceed without prior notice of hearing or on any abbreviated notice and hearing found practicable to adopt an emergency rule. The rule may be effective for a period of not longer than 120 days, renewable once for a period not exceeding 60 days, but the adoption of an identical rule is not precluded by this section. An emergency rule adopted under the provisions of this subsection, and the board's written reasons for the adoption, shall be filed in the Office of the Secretary of State for publication in the *Texas Register*.

(e) Except as prohibited by law, the agency may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons concerning contemplated rulemaking. The board may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of these committees are advisory only.

(f) Any interested person may petition the agency requesting the adoption of a rule as set out in §281.73 of this title (relating to Petition for Adoption of Rules).

§281.72. Effective Date of Rules.

Each rule adopted becomes effective 20 days after it is filed in the Office of the Secretary of State except that:

(1) if a later day is required by statute or specified in the rule, the later date is the effective date;

(2) if a federal statute or regulation requires that the agency implement a rule by a certain date, the rule is effective on the prescribed date; and

(3) subject to applicable constitutional or statutory provisions, an emergency rule (as that term is set out in §2001.034 of the APA) becomes effective immediately on filing with the secretary of state, or on a stated date less than 20 days thereafter, if the board finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The board shall take appropriate mea-

asures to make emergency rules known to persons who may be affected by them.

§281.73. Petition for Adoption of Rules.

Any interested person may petition the board requesting the adoption of a rule. Petitions shall be sent to the executive director/secretary. Within 60 days after the submission of a petition, the board shall either deny the petition in writing, stating the reasons for the denial, or shall initiate rulemaking proceedings. Petitions shall be deemed sufficient if they contain:

(1) the exact wording of the new, changed, or amended proposed rule;

(2) specific reference to the existing rule which is proposed to be changed or amended in the case of a changed or amended rule; and

(3) a justification for the proposed action set out in narrative form with sufficient particularity to inform the board and any other interested party of the reasons and arguments on which the petitioner is relying.

§281.74. President To President.

The president shall be the chairman and preside over all meetings of the board at which the president is present unless otherwise provided for under this chapter. In the absence of the president, the vice president shall preside. In the vice president's absence, one of the other Board members shall preside as acting chairman. The acting chairman shall be selected by mutual agreement of the board members present or, lacking mutual agreement, shall be the member senior in length of service on the board.

§281.75. Amendments and the Repeal of Conflicting Rules.

The provisions of this chapter shall govern in accordance with §281.1 of this title (relating to Objective and Scope) until amended. All rules of practice and procedure before the agency in conflict with the provisions of this chapter are repealed to the extent of the conflict. Special rules of the agency dealing with specific subjects or procedures are deemed to be compatible with these general rules of practice and procedure, and such special rules are not repealed.

§281.76. Effective Date.

The provisions of this chapter shall govern all proceedings filed after they take effect; and they shall also govern all proceedings then pending, except to the extent that the board shall determine that their application in a particular pending proceeding would not be feasible or would work injustice, in which event the former procedure applies.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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SUBCHAPTER D. MISCELLANEOUS

22 TAC §281.80

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Texas State Board of Pharmacy or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Pharmacy proposes the repeal of §281.80, concerning Grounds for Discipline for a Pharmacy Technician. The proposed repeal, if adopted, provides a more organized Chapter 281 regarding disciplinary guidelines. The repealed rule is proposed as a new rule in Subchapter A of Chapter 281 and is published elsewhere in this edition of the *Texas Register*.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure more organized rules regarding disciplinary guidelines. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed repeal may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2006.

The repeal is proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the repeal: Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§281.80. Grounds for Discipline for a Pharmacy Technician.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 15, 2006.

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Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

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CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §§283.2, 283.4, 283.6, 283.8, 283.9

The Texas State Board of Pharmacy proposes amendments to §283.2, concerning Definitions, §283.4, concerning Internship Requirements, §283.6, concerning Preceptor Requirements, §283.8, concerning Reciprocity Requirements, and §283.9, concerning Fee Requirements for licensure by Examination, Score Transfer, and Reciprocity. S.B. 410, passed during the 79th Regular Session of the Texas Legislature, amended the Texas Pharmacy Act authorized the Board to adopt rules

regarding the requirements of a healthcare professional serving as a preceptor in an internship program; allows individuals with a current license in another state to reciprocate to Texas; and authorized the Board to issue examination fee refunds under certain conditions. The amendments to §§283.2, 283.4, and 283.6, if adopted, will define a healthcare professional and specify the requirements for a healthcare professional to serve as a preceptor in accordance with S.B. 410. The amendments to §283.8, if adopted, will allow a pharmacist to reciprocate to Texas with a current license in another state. The amendments to §283.9, if adopted, will allow the Board to refund half of the examination fee (which is currently \$50) paid by an applicant if the applicant provides advance notice to the Board of if the applicant is unable to take the examination due to an emergency.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that pharmacist-interns are supervised in internship programs by qualified individuals; qualified individuals are allowed to reciprocate a pharmacist license to Texas; and applicants are granted examination refunds when appropriate. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2006.

The amendments are proposed under §§551.002, 554.051, 558.057, 558.059 and 558.101, of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §558.057 as authorizing the agency to adopt rules regarding the requirements of a preceptor. The Board interprets §558.059 as authorizing the agency to provide examination fee refunds under conditions. The Board interprets §558.101 as authorizing the agency to adopt rules regarding the qualifications to reciprocate a pharmacist license to Texas.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§283.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ACPE--The American Council on Pharmaceutical Education.

(2) Applicant--An individual having applied for licensure to act as a pharmacist in Texas.

(3) Approved continuing education--Continuing education which meets the requirements of §295.8 of this title (relating to Continuing Education Requirements).

(4) Board--The Texas State Board of Pharmacy; all members, divisions, departments, sections, and employees thereof.

(5) BS in pharmacy--A Bachelor of Science degree in pharmacy.

(6) Competency--A demonstrated state of preparedness for the realities of professional pharmacy practice.

(7) Didactic--Systematic classroom instruction.

(8) Extended-intern--An intern, [A pharmacist-intern,] registered with the board, who has:

(A) applied to the board for licensure by examination and has successfully passed the NAPLEX and Texas Pharmacy Jurisprudence Examination but lacks the required number of hours of internship for licensure; or

(B) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation and has either:

(i) graduated and received a professional degree from a college of pharmacy the professional degree program of which has been accredited by ACPE and approved by the board; or

(ii) completed all of the requirements for graduation and receipt of a professional degree from a college of pharmacy the professional degree program of which has been accredited by ACPE and approved by the board; or

(C) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission; or

(D) applied to the Board for re-issuance of a pharmacist license which has been expired for more than two years but less than ten years and has successfully passed the Texas Pharmacy Jurisprudence examination, but lacks the required number of hours of internship or continuing education required for licensure; or

(E) been ordered by the Board to complete an internship.

(9) Foreign pharmacy graduate--A pharmacist whose undergraduate pharmacy degree was conferred outside the United States by a pharmacy school listed in the World Directory of Schools of Pharmacy published by the World Health Organization. The United States, as used here, includes the 50 states, the District of Columbia, and Puerto Rico.

(10) FPGEC--The Foreign Pharmacy Graduate Equivalency Commission.

(11) FPGEE--The Foreign Pharmacy Graduate Equivalency Examination, given by FPGEC.

(12) Healthcare Professional--An individual licensed as:

(A) a physician in Texas or another state; or

(B) a pharmacist in another state but who is not licensed in Texas.

(13) Healthcare Professional Preceptor--A healthcare professional serving as an instructor for a Texas college-based internship program who is recognized by a Texas college of pharmacy to supervise and be responsible for the activities and functions of a pharmacist-intern in the internship program.

(14) [(42)] Internship--A practical experience program that is approved by the board.

(15) [(43)] MPJE--Multistate Pharmacy Jurisprudence Examination.

(16) [(44)] NABP--The National Association of Boards of Pharmacy.

(17) [(45)] NAPLEX--The North American Pharmacy Licensing Examination, or its predecessor, the National Association of Boards of Pharmacy Licensing Examination.

(18) [(46)] Pharm D--A doctorate in pharmacy.

(19) [(47)] Pharmaceutical care--The provision of drug therapy and other pharmaceutical services defined in the rules of the board and intended to assist in the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process.

(20) [(48)] Pharmacist-intern--An undergraduate student enrolled in the professional sequence of a college of pharmacy who has successfully completed the first professional year and a minimum of 30 credit hours of work towards a professional degree in pharmacy and is participating in a board-approved internship program or an extended-intern participating in a board-approved internship program.

(21) [(49)] Pharmacist Preceptor--A pharmacist licensed in Texas to practice pharmacy who meets the [certification] requirements under board rules and is recognized [certified] by the board to supervise and be responsible for the activities and functions of a pharmacist-intern in the internship program.

(22) [(20)] Professional degree--A baccalaureate in pharmacy (BS) or a doctor of pharmacy (Pharm D).

(23) [(24)] State--One of the 50 United States of America, the District of Columbia, and Puerto Rico.

(24) [(22)] Student-intern--A pharmacist-intern, registered with the board who is enrolled in the professional sequence of a college of pharmacy and has completed a minimum of 30 credit hours of work towards a professional degree in pharmacy and is participating in a board-approved internship program.

(25) [(23)] Texas Pharmacy Jurisprudence Exam or Texas Drug and Pharmacy Jurisprudence Examination--A licensing exam developed or approved by the Board which evaluates an applicant's knowledge of the drug and pharmacy requirements to practice pharmacy legally in the state of Texas.

§283.4. *Internship Requirements.*

(a) Goals and competency objectives of internship.

(1) The goal of internship is for the pharmacist-intern to attain the knowledge, skills, and abilities to safely, efficiently, and effectively provide pharmaceutical care to individual patients and practice pharmacy under the laws and regulations of the State of Texas.

(2) The following competency objectives are necessary to accomplish the goal of internship in paragraph (1) of this subsection.

(A) Provides drug products. The pharmacist-intern shall acquire competence in determining the appropriateness of prescription drug orders and medication orders; evaluating and selecting products; and assuring the accuracy of the product/prescription dispensing process.

(B) Communicates with patients and/or their care givers about prescription drugs. The pharmacist-intern shall acquire competence in interviewing and counseling patients, and/or their care givers, on drug usage, dosage, packaging, and storage; discussing drug cautions, side effects, and patient conditions; explaining policies

on fees and services; relating to patients in a professional manner; and interacting to confirm patient understanding.

(C) Communicates with patients and/or their care givers about nonprescription products, devices, and diagnostic aids. The pharmacist-intern shall acquire competence in interviewing and counseling patients and/or their care givers on conditions and intended drug use; assisting in and recommending drug selection; referring patients to other health professionals; providing information on medical/surgical and home health-care devices and home diagnostic products; and providing poison control treatment information and referral.

(D) Communicates with health professionals and the public. The pharmacist-intern shall acquire competence in obtaining and providing accurate and concise information in a professional manner and using appropriate oral, written, and nonverbal language.

(E) Collaborates with physicians, other health-care professionals, patients and/or their care givers to develop a therapeutic plan which will include monitoring and evaluating drug therapy. The pharmacist-intern shall acquire competence in collaborating with physicians, other health care professionals, patients, and/or their care givers to formulate a therapeutic plan. The pharmacist-intern shall acquire competence in establishing and interpreting data-bases, identifying drug-related problems and recommending appropriate pharmacotherapy specific to patient needs and devising follow-up plans.

(F) Maintains professional-ethical standards. The pharmacist-intern is required to comply with laws and regulations pertaining to pharmacy practice; to learn to apply good professional judgment; to exhibit reliability and credibility in dealing with others; to deal professionally and ethically with colleagues and patients; to demonstrate sensitivity and empathy for patients/care givers; and to maintain confidentiality.

(G) Compounds. The pharmacist-intern shall acquire competence in using acceptable professional procedures; selecting appropriate equipment and containers; appropriately preparing compounded dosage forms; and documenting calculations and procedures.

(H) Retrieves and evaluates drug information. The pharmacist-intern shall acquire competence in selecting best available resources for answering a drug-related request in a timely fashion and in interpreting the information obtained and judging its relevance.

(I) Manages general pharmacy operations. The pharmacist-intern shall develop a general understanding of planning and policy-making. The pharmacist-intern shall have an understanding of drug security, storage and control procedures, and maintaining quality assurance. The pharmacist-intern shall learn to notice and document discrepancies and irregularities, keep accurate records and document actions. The pharmacist-intern shall attend meetings requiring pharmacy representation.

(J) Understands the necessity of participating in public health and professional activities. The pharmacist-intern shall develop basic knowledge and skills needed to become an effective health educator and active participant in public health programs and professional organizations.

(K) Conducts research. The pharmacist-intern may develop research skills to expand and/or refine knowledge in the areas of pharmaceutical sciences or pharmaceutical services. This includes data collection and analysis of scientific, clinical, sociological, and/or economic impacts of pharmaceuticals (including investigational drugs), pharmaceutical care, and patient behaviors, with dissemination of findings to the scientific community and the public.

(b) Hours requirement.

(1) The board requires 1,500 hours of internship for licensure. These hours may be obtained through one of more of the following methods:

(A) in a board approved student internship program, as specified in subsection (c) of this section;

(B) in a board-approved extended-internship program as specified in subsection (d) of this section; and/or

(C) through internship hours approved and certified to the board by another state board of pharmacy.

(2) Pharmacist-interns participating in an internship may be credited no more than 50 hours per week of internship experience.

(3) Internship hours may be used for the purpose of licensure for no longer than two years from the date the internship is completed.

(c) Student Internship Programs.

(1) Texas colleges of pharmacy internship programs.

(A) The board shall review for approval Texas colleges of pharmacy internship programs on or before September 1 of each fiscal year. The purpose of the board review will be to determine if such internship programs demonstrate that the competency objectives listed in subsection (a) of this section are capable of being met by each student-intern completing the internship. The board reserves the right to set conditions relating to the approval of such programs.

(B) The Texas colleges of pharmacy shall determine through examinations that each student-intern completing the college internship program meets the competency objectives listed in subsection (a) of this section.

(C) Internship experience shall be gained under:

(i) a pharmacist preceptor; ~~[licensed by the board and approved as a preceptor by the board; or]~~

(ii) a pharmacist licensed in a state other than Texas when working in a federal facility and serving as an instructor for a Texas college-based internship program; or [-]

(iii) a healthcare professional preceptor.

(D) All internship experience shall be approved by the board and shall occur in sites and under conditions which teach one or more of the competency objectives listed in subsection (a) of this section.

(E) Prior to taking the licensure examination any applicant participating in a Texas college-based internship shall complete the requirements of such internship.

(F) Pharmacist-interns completing a board-approved Texas college-based structured internship will be awarded 1,500 hours of internship experience, or the number of hours actually obtained if greater than 1,500. No credit shall be awarded for didactic experience.

(G) No more than 300 hours of the required 1,500 hours may be obtained under a preceptor that is a healthcare professional.

(2) Internship experience acquired by student-interns not in a Texas College of Pharmacy Internship Program.

(A) A person may be designated a student-intern provided he/she meets all of the following requirements:

(i) has made application to the board;

(ii) is enrolled in the professional sequence of a college of pharmacy whose professional degree program has been accredited by ACPE and approved by the board; and

(iii) has successfully completed the first professional year and a minimum of 30 credit hours of work towards a professional degree in pharmacy.

(B) The terms of the student internship shall be as follows.

(i) The internship shall be gained concurrent with college attendance, which may include:

(I) partial semester breaks such as spring breaks;

(II) between semesters; and

(III) whole semester breaks provided the student-intern attended the college in the immediate preceding semester and is scheduled with the college to attend in the immediate subsequent semester.

(ii) The student internship shall be board-approved and gained in a pharmacy licensed by the board, or a federal government pharmacy participating in a board-approved internship program.

(iii) The student internship shall be in the presence of and under the direct supervision of a board-approved preceptor who is licensed by the board.

(C) None of the internship hours acquired may be substituted for any of the hours required in the Texas college of pharmacy internship program.

(3) Expiration date for student-intern designation. The student-internship remains in effect until the earlier of the following occurs:

(A) the student-intern voluntarily or involuntarily ceases enrollment in a college of pharmacy whose professional degree program has been accredited by ACPE and approved by the board;

(B) the failure of the student-intern to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation;

(C) upon receipt of the results of the NAPLEX and Texas Jurisprudence Examinations specified in this section.

(d) Extended-internship program.

(1) A person may be designated an extended-intern provided he/she has made application to the board and met one of the following requirements:

(A) passed NAPLEX and the Texas Pharmacy Jurisprudence Examination but lacks the required number of internship for licensure;

(B) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation and has:

(i) graduated and received a professional degree from a college of pharmacy the professional degree program of which has been accredited by ACPE and approved by the board; or

(ii) completed all of the requirements for graduation and receipt of a professional degree from a college of pharmacy the professional degree program of which has been accredited by ACPE and approved by the board; or

(C) applied to the board to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after obtaining full certification from the Foreign Pharmacy Graduate Equivalency Commission;

(D) applied to the board for re-issuance of a pharmacist license which has expired for more than two years but less than ten years and has successfully passed the Texas pharmacy jurisprudence examination, but lacks the required number of hours of internship or continuing education required for licensure; or

(E) been ordered by the Board to complete an internship.

(2) The terms of the extended-internship shall be as follows.

(A) The extended-internship shall be board-approved and gained in a pharmacy licensed by the board, or a federal government pharmacy participating in a board-approved internship program.

(B) The extended-internship shall be in the presence of and under the direct supervision of a board-approved preceptor who is licensed by the board.

(3) The extended internship remains in effect until the earlier of the following occurs:

(A) the failure of the extended-intern to take the NAPLEX and Texas Jurisprudence Examinations within three calendar months after graduation or Foreign Pharmacy Graduate Equivalency Commission (FPGEC) certification;

(B) the failure of the extended-intern to pass the NAPLEX and Texas Jurisprudence Examinations specified in this section; or

(C) the failure of the extended-intern to complete the requirements for licensure within two years after passing the required examination(s).

(4) An applicant for licensure who has completed less than 500 hours of internship at the time of application shall complete the remainder of the 1,500 hours of internship and have the preceptor certify that the applicant has met the objectives listed in subsection (a) of this section.

(e) Pharmacist-intern identification.

(1) The board shall provide the pharmacist-intern written documentation of his or her designation as a pharmacist-intern. This written documentation serves as identification and authorization to perform the duties of a pharmacist-intern as described in §283.5 of this title (relating to Pharmacist-Intern Duties).

(2) Pharmacist-interns shall keep this written documentation with them at all times they are serving as a pharmacist-intern and make it available for inspection by board agents.

(3) All pharmacist-interns shall wear an identification tag or badge which bears the person's name and identifies him or her as a pharmacist-intern.

(f) Pharmacist-intern Notification Requirement. A pharmacist-intern shall notify the board in writing within 10 days of a change of address, giving the old and new address.

§283.6. *Preceptor Requirements.*

(a) Preceptors shall be:

(1) a pharmacist [pharmacists] whose license to practice pharmacy in Texas is current and not on inactive status with the board;

(2) a pharmacist licensed in a state other than Texas when working in a federal facility and serving as an instructor for a Texas college-based internship program; or

(3) a healthcare professional who is recognized by a Texas college of pharmacy.

(b) ~~[Preceptors are required to be approved and certified by the board.]~~ A pharmacist preceptor shall publicly display the preceptor certificate with his/her license to practice pharmacy and the license renewal certificate.

(c) To be recognized ~~[For certification]~~ as a pharmacist preceptor, a pharmacist must:

(1) have at least:

(A) one year of experience in the type of internship practice setting; or

(B) six months of residency training if the pharmacy resident is in a program accredited by the American Society of Health System Pharmacists;

(2) have completed:

(A) for initial certification, three hours of preceptor training provided by an ACPE approved provider within the previous two years. Such training shall be:

(i) developed by a Texas college of pharmacy; or

(ii) approved by:

(I) a committee comprised of the Texas colleges of pharmacy; or

(II) the board; or

(B) to continue certification, three hours of preceptor training provided by an ACPE approved provider within the preceptor pharmacist's current license renewal period. Such training shall be:

(i) developed by a Texas college of pharmacy; or

(ii) approved by:

(I) a committee comprised of the Texas colleges of pharmacy; or

(II) the board; and

(3) meet the requirements of subsection (e) of this section.

(d) A preceptor may supervise only one pharmacist-intern at any given time. Texas Colleges of Pharmacy may request a different preceptor to pharmacist-intern ratio during the board's annual review and approval of their college based, structured internship program. Any such ratio shall apply only to the internship experience acquired as a part of the college based, structured internship program. In an emergency caused by a natural or manmade disaster or any other exceptional situation that causes an extraordinary demand for preceptors, the executive director of the board, in his/her discretion, may allow a preceptor in a Texas College of Pharmacy internship program to supervise up to two interns. The executive director shall notify the Texas Colleges of Pharmacy of the length of time a preceptor may supervise up to two interns.

(e) No pharmacist may serve as a preceptor if his or her license to practice pharmacy has been the subject of an order of the board imposing any penalty set out in the Act, §565.051, during the period he or she is serving as a preceptor or within the three-year period immediately preceding application for approval as a preceptor. Provided, however, a pharmacist who has been the subject of such an order of

the board may petition the board, in writing, for approval to act as a preceptor. The board may consider the following items in approving a pharmacist's petition to act as a preceptor:

(1) the type and gravity of the offense for which the pharmacist's license was disciplined;

(2) the length of time since the action that caused the order;

(3) the length of time the pharmacist has previously served as a preceptor;

(4) the availability of other preceptors in the area;

(5) the reason(s) the pharmacist believes he/she should serve as a preceptor;

(6) a letter of recommendation from a Texas College of Pharmacy if the pharmacist will be serving as a preceptor for a Texas College of Pharmacy; and

(7) any other factor presented by the pharmacist demonstrating good cause why the pharmacist should be allowed to act as a preceptor.

§283.8. *Reciprocity Requirements.*

(a) All applicants for licensure by reciprocity shall:

(1) meet the educational and age requirements specified in §283.3 of this title (relating to Educational and Age Requirements);

(2) complete the Texas and NABP applications for reciprocity. (Any fraudulent statement made in the application for reciprocity is grounds for denial of the application; if such application is granted, any fraudulent statement is grounds for suspension, revocation, and/or cancellation of any license so granted by the board);

(3) present to the board proof of initial licensing by examination and proof that their ~~current~~ ~~[the]~~ license and ~~any~~ other license or licenses granted to the applicant by any other state have not been suspended, revoked, canceled, surrendered, or otherwise restricted for any reason; and

(4) pass the Texas Pharmacy Jurisprudence Examination with a minimum grade of 75. (The passing grade may be used for the purpose of licensure by reciprocity for a period of two years from the date of passing the examination.) Should the applicant fail to achieve a minimum grade of 75 on the Texas Pharmacy Jurisprudence Examination, such applicant, in order to be licensed, shall retake the Texas Pharmacy Jurisprudence Examination as specified in §283.11 of this title (relating to Examination Retake Requirements) until such time as a minimum grade of 75 is achieved.

~~[(b) The completed reciprocity applications and fees as specified in §283.9 of this title (relating to Fee Requirements for Licensure by Examination and Reciprocity) shall be received in the board's office no later than six weeks prior to the scheduled examination.]~~

(b) ~~[(e)]~~ A reciprocity applicant originally licensed after January 1, 1978, and who has graduated and received a professional degree from a college of pharmacy whose professional degree program has been approved by ACPE and approved by the board, shall show proof such applicant has:

(1) passed the NAPLEX or equivalent examination based on criteria no less stringent than the criteria in force in Texas; or

(2) been continually engaged in the practice of pharmacy for a period of two years immediately preceding the application for reciprocal licensure and has obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state that originally licensed such pharmacist; or

(3) been licensed to practice pharmacy for a period of two years immediately preceding the application for reciprocal licensure and has obtained sufficient continuing education credits required to maintain a license to practice pharmacy in the state that originally licensed such pharmacist.

(c) ~~[(d)]~~ A reciprocity applicant who is a foreign pharmacy graduate shall provide written documentation that such applicant has:

(1) obtained full certification from the FPGEC; and

(2) passed NAPLEX or equivalent examination based on criteria no less stringent than the criteria in force in Texas.

(d) ~~[(e)]~~ If a reciprocity applicant should fail the Texas Pharmacy Jurisprudence Examination, written notification of intent to re-take the exam shall be received in the board office no later than three weeks prior to the examination date.

(e) ~~[(f)]~~ An applicant is not eligible for licensing by reciprocity unless the state in which the applicant is currently or was initially licensed as a pharmacist also grants reciprocal licensing to pharmacists duly licensed by examination in this state, under like circumstances and conditions.

§283.9. Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity.

(a) The fees for licensure by examination, score transfer, and reciprocity shall include one exam administration. ~~[These fees are not refundable.]~~ The fees are as follows:

(1) Examination Fee. The fee to submit an application for licensure by examination will include:

(A) An examination processing fee of \$52, which is to be paid to the Texas State Board of Pharmacy and includes the processing of the Texas application.

(B) NAPLEX administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.

(C) MPJE administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.

(2) Reciprocity Fee. The fee to submit an application for licensure by reciprocity will include:

(A) A reciprocity fee of \$255, which is to be paid to the Texas State Board of Pharmacy.

(B) MPJE administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.

(C) A license verification fee as determined by NABP, which is to be paid to NABP in accordance with NABP policy.

(3) Score Transfer Fee. The fees to transfer a score to Texas, using the NAPLEX Score Transfer system will include:

(A) An examination processing fee of \$52, which is to be paid to the Texas State Board of Pharmacy and includes the processing of the Texas application.

(B) MPJE administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.

(C) A score transfer fee as determined by NABP, which is to be paid to NABP in accordance with NABP policy.

(b) If an applicant fails an examination or is required to take an examination by the Board, the fees for one examination are as stated in subsection (a) of this section.

(c) Rescheduling or canceling an examination appointment. ~~[Refunds for fees charged by NABP for the administration of the NAPLEX and MPJE are in accordance with NABP policy. Rescheduling of an examination appointment shall be in accordance with NABP policy.]~~

(1) Refunds for fees charged by NABP for the administration of the NAPLEX and MPJE are in accordance with NABP policy. Rescheduling of an examination appointment shall be in accordance with NABP policy.

(2) The Board may refund fifty percent of an examination fee paid to the Board by an applicant if the applicant:

(A) provides advance notice of their inability to take the examination at least 30 days prior to receiving authorization to take the examination; or

(B) is unable to take the examination due to an emergency situation including but not limited to a manmade or natural disaster, documented serious medical illness, or other circumstance deemed an emergency by the Executive Director of the Board.

~~[(d)] For the purpose of calculating the delinquent penalty specified in §559.003 of the Texas Pharmacy Act, the examination fee shall be \$300.]~~

(d) ~~[(e)]~~ A person who takes NAPLEX and/or the Texas Pharmacy Jurisprudence Examination will be notified of the results of the examination(s) within two weeks of receipt of the results of the examination(s) from the testing service. If both NAPLEX and the Texas Pharmacy Jurisprudence Examination are taken, the applicant will not be notified until the results of both examinations have been received. Such notification will be made within two weeks after receipt of the results of both examinations.

(e) ~~[(f)]~~ Once an applicant has successfully completed all requirements of licensure, the applicant will be notified of licensure as a pharmacist and of his or her pharmacist license number and the following is applicable.

(1) The notice letter shall serve as authorization for the person to practice pharmacy in Texas for a period of 30 days from the date of the notice letter.

(2) The applicant shall complete a pharmacist license application and pay one pharmacist licensee fee as specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees).

(3) The provisions of §295.7 of this title (relating to Pharmacist License Renewal) apply to the timely receipt of an application and licensure fee.

(4) If application and payment of the pharmacist license fee are not received by the board within 30 days from the date of the notice letter, the person's license to practice pharmacy shall expire. A person may not practice pharmacy with an expired license. The license may be renewed according to the following schedule.

(A) If the notice letter has been expired for 90 days or less, the person may become licensed by making application and paying to the board one license fee and a fee that is one-half of the examination fee for the license.

(B) If the notice letter has been expired for more than 90 days but less than one year, the person may become licensed by making

application and paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(C) If the notice letter has been expired for one year or more, the person shall apply for a new license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601666

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 305-8037



CHAPTER 291. PHARMACIES

SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33

The Texas State Board of Pharmacy proposes amendments to §291.33, concerning Operational Standards. The amendments, if adopted, will clarify the labeling requirements for drugs dispensed or administered to a patient who is in a nursing home.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will ensure that drugs dispensed or administered to patients in nursing homes are appropriately labeled. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., May 1, 2006.

The amendments are proposed under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §483.042 of the Texas Dangerous Drug Act (Health and Safety Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §483.042 as authorizing the agency to adopt rules for the labeling of drugs dispensed or administered to a patient who is institutionalized.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§291.33. *Operational Standards.*

(a) - (b) (No change.)

(c) Prescription dispensing and delivery.

(1) - (6) (No change.)

(7) Labeling.

(A) At the time of delivery of the drug, the dispensing container shall bear a label with at least the following information:

(i) name, address and phone number of the pharmacy;

(ii) unique identification number of the prescription;

(iii) date the prescription is dispensed;

(iv) initials or an identification code of the dispensing pharmacist;

(v) name of the prescribing practitioner;

(vi) name of the patient or if such drug was prescribed for an animal, the species of the animal and the name of the owner;

(vii) instructions for use;

(viii) quantity dispensed;

(ix) appropriate ancillary instructions such as storage instructions or cautionary statements such as warnings of potential harmful effects of combining the drug product with any product containing alcohol;

(x) if the prescription is for a Schedules II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(xi) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, Chapters 562 and 563, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(xii) the name of the advanced practice nurse or physician assistant, if the prescription is carried out or signed by an advanced practice nurse or physician assistant in compliance with Subtitle B, Chapter 157, Occupations Code; and

(xiii) the name and strength of the actual drug product dispensed, unless otherwise directed by the prescribing practitioner.

(I) The name shall be either:

(-a-) the brand name; or

(-b-) if no brand name, then the generic name and name of the manufacturer or distributor of such generic drug. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug products having no brand name, the principal active ingredients shall be indicated on the label.)

(II) Except as provided in clause (xi) of this subparagraph, the brand name of the prescribed drug shall not appear on the prescription container label unless it is the drug product actually dispensed.

(B) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that [the system employed by the pharmacy in dispensing the prescription drug order] adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of the drug dispensed;

(-d-) name of the patient;

(-e-) name of the prescribing practitioner; and

(II) sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(d) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601667

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 305-8037



CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §§297.1 - 297.9

The Texas State Board of Pharmacy proposes amendments to Chapter 297, §§297.1 - 297.9, concerning the registration of pharmacy technician trainees. The amendments, if adopted, will require individuals to register with the Board before beginning work in a pharmacy as a pharmacy technician trainee and outline the procedures and requirements for individuals to register as pharmacy technician trainees. The amendments will implement the provisions of Senate Bill 410. The amendments, if adopted, will also require pharmacy technician applicants and pharmacy technician trainee applicants to submit fingerprint information in order for the Board to access criminal history information.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in

effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended sections will be to ensure that only qualified individuals are working in pharmacies as pharmacy technician trainees. Individuals who are required to comply with the amended sections will be required to pay a fee of approximately \$50 for accessing criminal history information which includes the cost of submitting fingerprint information and paying associated costs to the Texas Department of Public Safety and Federal Bureau of Investigations. There is no fiscal impact for small or large businesses or to other entities which are required to comply with the amended sections.

A public hearing to receive comments on the proposed amendments will be held at 9:00 a.m. on Tuesday, May 9, 2006, at the Health Professions Council Board Room, 333 Guadalupe Street, Tower II, Room 2-225, Austin, Texas. Persons planning to present comments to the Board are asked to provide a written copy of their comments prior to the hearing or bring 20 copies to the hearing. Written comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., May 1, 2006.

The amendments are proposed under §§551.002, 554.051, and 568.007 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §568.007 as authorizing the agency to register pharmacy technician trainees.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§297.1. Purpose.

The purpose of this chapter is to provide a comprehensive, coherent regulatory scheme for the registration and training of pharmacy technicians and pharmacy technician trainees in this state. The provisions of this chapter, in conjunction with the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code, as amended), govern the method for the issuance of a registration to a pharmacy technician and a pharmacy technician trainee in Texas.

§297.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (2) (No change.)

(3) Pharmacy technician--An individual who is registered with the Board as a pharmacy technician and whose responsibility in a pharmacy is to provide technical services that do not require professional judgment regarding preparing and distributing drugs and who works under the direct supervision of and is responsible to a pharmacist. [Pharmacy technician includes registered pharmacy technicians and pharmacy technician trainees.]

(4) Pharmacy technician trainee--An individual who is registered with the board as a pharmacy technician trainee and is authorized to participate in a pharmacy's technician training program.

{{(4) Pharmacy technician trainee--A person who is not registered as a pharmacy technician by the board and is either:}}

{{(A) participating in a pharmacy's technician training program; or}}

{{(B) currently enrolled in either a:}}

{{(i) pharmacy technician training program:}}

{{(I) accredited by the American Society of Health-System Pharmacists or in application-submitted status for accreditation by the American Society of Health-System Pharmacists; or}}

{{(H) approved by the Texas Higher Education Coordinating Board; or}}

{{(ii) health science technology education program in a Texas high school that is accredited by the Texas Education Agency.}}

{{(5) Registered Pharmacy Technician--A pharmacy technician who is registered with the board.}}

§297.3. Registration Requirements.

(a) General. Effective February 1, 2007, individuals who are not registered with the Board may not be employed as or perform the duties of a pharmacy technician or pharmacy technician trainee. [June 1, 2004, all persons employed as pharmacy technicians must be either registered pharmacy technicians or pharmacy technician trainees as follows:]

{{(1) All persons who have passed the required pharmacy technician certification examination must be registered with the board under the provisions of this section.}}

{{(2) All persons who have not taken and passed the required pharmacy certification examination shall be designated pharmacy technician trainees under the provisions of §297.5 of this title (relating to Pharmacy Technician Trainees).}}

(b) Registration for pharmacy technician trainees. An individual may register as a pharmacy technician trainee only once and the registration may not be renewed [Initial registration].

(1) Each applicant for registration shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purposes of this subparagraph, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years;

(B) complete the Texas application for registration; and

(C) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees.

{{(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purpose of this clause, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years; and}}

{{(B) either have:}}

{{(i) taken and passed the Pharmacy Technician Certification Board's National Pharmacy Technician Certification Examination or other examination approved by the board and have a current certification certificate; or}}

{{(ii) been granted an exemption from certification by the board as specified in §297.7 of this title (relating to Exemption from Pharmacy Technician Certification Requirements); and}}

{{(C) complete the Texas application for registration. Any fraudulent statement made in the application is grounds for denial of the application; if such application is granted, any fraudulent statement is grounds for suspension or revocation of any registration granted by the board; and}}

{{(D) pay the registration fee specified in §297.4 of this title (relating to Fees).}}

(2) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a pharmacy technician trainee and of his or her pharmacy technician trainee registration number.

(3) Pharmacy technician trainee registrations expire two years from the date of registration.

{{(2) New pharmacy technician registrations shall be assigned an expiration date and the fee shall be prorated based on the assigned expiration date.}}

{{(3) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a pharmacy technician and of his or her pharmacy technician registration number.}}

(c) Initial registration for pharmacy technicians.

(1) Each applicant for registration shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purpose of this clause, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years; and

(B) either have:

(i) taken and passed the Pharmacy Technician Certification Board's National Pharmacy Technician Certification Examination or other examination approved by the board and have a current certification certificate; or

(ii) been granted an exemption from certification by the board as specified in §297.7 of this title (relating to Exemption from Pharmacy Technician Certification Requirements); and

(C) complete the Texas application for registration;

(D) meet all requirements necessary in order for the Board to access the criminal history record information, including submitting fingerprint information and paying the required fees; and

(E) pay the registration fee specified in §297.4 of this title (relating to Fees).

(2) New pharmacy technician registrations shall be assigned an expiration date and the fee shall be prorated based on the assigned expiration date.

(3) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a registered pharmacy technician and of his or her pharmacy technician registration number.

(d) [(e)] Renewal.

(1) All applicants for renewal of a pharmacy technician registration shall:

(A) complete the Texas application for registration; [~~Any fraudulent statement made in the application is ground for suspension or revocation of any registration renewed by the board;~~]

(B) pay the renewal fee specified in §297.4 of this title; and

(C) complete 20 contact hours of continuing education per renewal period in as specified in §297.8 of this title (relating to Continuing Education).

(2) A pharmacy technician registration expires on the last day of the assigned expiration month.

(3) If the completed application and renewal fee are [is] not received in the board's office on or before the last day of the assigned expiration month, the person's pharmacy technician registration shall expire. A person shall not practice as a pharmacy technician with an expired registration.

(4) If a pharmacy technician registration has expired, the person may renew the registration by paying to the board the renewal fee and a delinquent fee that is equal to the renewal fee as specified in §297.4 of this title.

(5) If a pharmacy technician registration has expired for more than one year, the pharmacy technician may not renew the registration and must complete the requirements for initial registration as specified in subsection (c) [(b)] of this section.

(6) After review, the board may determine that paragraph (5) of this subsection does not apply if the registrant is the subject of a pending investigation or disciplinary action.

§297.4. Fees.

(a) Pharmacy technician trainee. There shall be no fee for registration as a pharmacy technician trainee.

(b) Pharmacy technician.

(1) Biennial Registration. The board shall require biennial renewal of all pharmacy technician registrations provided under Chapter 568 of the Act.

(2) Initial Registration Fee.

(A) The fee for initial registration shall be \$56 for a two year registration and is composed of the following fees:

(i) \$48 for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(ii) a \$3 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(iii) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(B) The initial registration fee shall be prorated based on the assigned expiration date.

(3) Renewal Fee. The fee for biennial renewal of a pharmacy technician registration shall be \$53 and is composed of the following:

(A) \$48 for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) a \$3 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

[(a) Biennial Registration. The board shall require biennial renewal of all pharmacy technician registrations provided under Chapter 568 of the Act.]

[(b) Initial Registration Fee.]

[(1) The fee for initial registration shall be \$56 for a two year registration and is composed of the following fees:]

[(A) \$48 for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;]

[(B) a \$3 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and]

[(C) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.]

[(2) The initial registration fee shall be prorated based on the assigned expiration date.]

[(c) Renewal Fee. The fee for biennial renewal of a pharmacy technician registration shall be \$53 and is composed of the following:]

[(1) \$48 for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;]

[(2) a \$3 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and]

[(3) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.]

(c) [(d)] Duplicate or Amended Certificates. The fee for issuance of a duplicate or amended pharmacy technician trainee registration certificate or pharmacy technician registration renewal certificate shall be \$20.

§297.5. Pharmacy Technician Trainees.

(a) A person [shall be] designated as a pharmacy technician trainee shall be registered with the board prior to beginning training in a Texas licensed pharmacy. [at all times prior to registration with the board.]

(b) A person may be designated as a pharmacy technician trainee for no more than two years [one year] and [they must complete] the requirements for registration as a pharmacy technician must be completed within the two [one] year period.

[(c) Subsection (b) of this section does not apply to a pharmacy technician trainee working in a pharmacy as part of a training program accredited by the American Society of Health-System Pharmacists or an individual enrolled in a health science technology education program in a Texas high school.]

[(d) Individuals enrolled in a health science technology education program in a Texas high school that is accredited by the Texas Education Agency, may be designated as a pharmacy technician trainee for up to two years provided the work as a pharmacy technician is concurrent with enrollment in a health science technology education program, which may include:]

[(1) partial semester breaks such as spring breaks;]

[(2) between semesters; and]

~~[(3) whole semester breaks provided the individual was enrolled in the health science technology education program in the immediate preceding semester and is scheduled with the high school to attend in the immediate subsequent semester.]~~

§297.6. Pharmacy Technician and Pharmacy Technician Trainee Training.

(a) Pharmacy technicians and pharmacy technician trainees shall complete initial training as outlined by the pharmacist-in-charge in a training manual. Such training:

(1) shall meet the requirements of subsections (d) or (e) ~~[(e)]~~ of this section; and

(2) may not be transferred to another pharmacy unless:

(A) (No change.)

(B) the pharmacist-in-charge of each pharmacy in which the pharmacy technician or pharmacy technician trainee works certifies that the pharmacy technician or pharmacy technician trainee is competent to perform the duties assigned in that pharmacy.

(b) The pharmacist-in-charge shall assure the continuing competency of pharmacy technicians and pharmacy technician trainees through in-service education and training to supplement initial training.

(c) The pharmacist-in-charge shall document the completion of the training program and certify the competency of pharmacy technicians and pharmacy technician trainees completing the training. A written record of initial and in-service training of pharmacy technicians and pharmacy technician trainees shall be maintained and contain the following information:

(1) - (3) (No change.)

(4) a statement that certifies that the pharmacy technician or pharmacy technician trainee is competent to perform the duties assigned;

(5) (No change.)

(6) signature of the pharmacy technician or pharmacy technician trainee and the pharmacist-in-charge or other pharmacist employed by the pharmacy and designated by the pharmacist-in-charge as responsible for training of pharmacy technicians and pharmacy technician trainees.

(d) (No change.)

(e) Pharmacy technician and pharmacy technician trainee training shall be outlined in a training manual. Such training manual shall, at a minimum, contain the following:

(1) written procedures and guidelines for the use and supervision of pharmacy technicians and pharmacy technician trainees. Such procedures and guidelines shall:

(A) specify the manner in which the pharmacist responsible for the supervision of pharmacy technicians and pharmacy technician trainees will supervise such personnel and verify the accuracy and completeness of all acts, tasks, and functions performed by such personnel; and

(B) specify duties which may and may not be performed by pharmacy technicians and pharmacy technician trainees; and

(2) instruction in the following areas and any additional areas appropriate to the duties of pharmacy technicians and pharmacy technician trainees in the pharmacy:

(A) - (K) (No change.)

(f) Pharmacy technicians and pharmacy technician trainees compounding non-sterile pharmaceuticals shall meet the training and education requirements specified in the rules for the class of pharmacy in which the pharmacy technician or pharmacy technician trainee is working.

(g) Pharmacy technicians and pharmacy technician trainees compounding sterile pharmaceuticals shall meet the training and education requirements specified in the rules for class of pharmacy in which the pharmacy technician or pharmacy technician trainee is working.

§297.7. Exemption from Pharmacy Technician Certification Requirements.

(a) Purpose. The board encourages all pharmacy technician trainees ~~[technicians]~~ to become certified by taking and passing the National Pharmacy Technician Certification Exam or other examination approved by the board. However, the board will consider petitions for exemption on a case by case basis. This section outlines procedures ~~[for pharmacy technicians]~~ to petition the board for an exemption to the certification requirements established by §568.002 of the Act (relating to Pharmacy Technician Registration Required).

(b) (No change.)

(c) Rural county exempt pharmacy technicians. Rural county exempt pharmacy technicians are pharmacy technicians working in counties with a population of 50,000 or less and meet the following requirements.

(1) Eligibility. An individual ~~[A pharmacy technician]~~ may petition the board for an exemption from the certification requirements established by §568.002 of the Act (relating to Pharmacy Technician Registration Required) if the individual ~~[technician]~~ works in a county with a population of 50,000 or less.

(2) Petition process.

(A) An individual ~~[A pharmacy technician]~~ shall petition the board for the exemption. The petition shall contain the following:

(i) name of the individual ~~[pharmacy technician]~~;

(ii) name, address, and license number of the pharmacy where the individual ~~[pharmacy technician]~~ is employed;

(iii) (No change.)

(iv) a notarized statement signed by the individual ~~[pharmacy technician]~~ stating:

(I) the reason(s) the individual ~~[pharmacy technician]~~ is asking for the exemption, including reason(s) the individual ~~[pharmacy technician]~~ has not taken and passed the National Pharmacy Technician Certification Exam or other examination approved by the board; and

(II) (No change.)

(v) a notarized statement signed by the pharmacist-in-charge of the pharmacy the individual ~~[pharmacy technician]~~ is currently working, stating that the:

(I) pharmacist-in-charge supports the individual's ~~[pharmacy technician's]~~ petition for exemption;

(II) individual ~~[pharmacy technician]~~ has completed the pharmacy technician training program at the pharmacy; and

(III) pharmacist-in-charge has personally worked with and observed that the individual ~~[pharmacy technician]~~ is competent to perform the duties of a pharmacy technician.

(B) Each petition shall be considered on an individual basis. In determining whether to grant the exemption, the board shall consider the information contained in the petition and additional information including the following:

- (i) (No change.)
- (ii) reason(s) the individual [pharmacy technician] is asking for the exemption;
- (iii) - (v) (No change.)
- (vi) the following information concerning the pharmacy where the individual [pharmacy technician] is currently working:
 - (I) - (II) (No change.)

(C) After review of the petition, the individual [pharmacy technician] and the pharmacist-in-charge of the pharmacy where the individual [technician] is working shall be notified in writing of approval or denial of the petition.

(i) If the petition is approved, the individual [pharmacy technician] shall be sent an exemption certificate, which shall be displayed at the pharmacy where the pharmacy technician is working.

(ii) In lieu of the exemption, the board may grant the individual [pharmacy technician] up to an additional 12 months to take and pass the National Pharmacy Technician Certification Exam or other examination approved by the board. During this additional time, the individual [pharmacy technician] shall be designated a pharmacy technician trainee.

(3) (No change.)

§297.8. Continuing Education Requirements.

(a) Pharmacy Technician Trainees. Pharmacy technician trainees are not required to complete continuing education.

(b) Pharmacy Technicians.

(1) All pharmacy technicians shall be exempt from the continuing education requirements during their initial registration period.

(2) All pharmacy technicians must complete 20 contact hours of approved continuing education per renewal period in pharmacy related subjects in order to renew their registration as a pharmacy technician. No more than 10 of the 20 hours may be earned at the pharmacy technician's workplace through in-service education and training under the direct supervision of the pharmacist(s).

(3) All pharmacy technicians must complete 20 contact hours of approved continuing education per renewal period in pharmacy related subjects in order to renew their registration as a pharmacy technician. No more than 10 of the 20 hours may be earned at the pharmacy technician's workplace through in-service education and training under the direct supervision of the pharmacist(s).

(4) One hour specified in subsection (a) of this section shall be related to pharmacy law.

(5) Pharmacy technicians are required to maintain records of completion of continuing education for three years from the date of reporting the hours on a renewal application. The records must contain at least the following information:

- (A) name of participant;
- (B) title and date of program;
- (C) program sponsor or provider (the organization);
- (D) number of hours awarded; and
- (E) dated signature of sponsor representative.

(6) The board shall audit the records of pharmacy technicians for verification of reported continuing education credit. The following is applicable for such audits.

(A) Upon written request, a pharmacy technician shall provide to the board copies of the record required to be maintained in paragraph (5) of this subsection or certificates of completion for all continuing education contact hours reported during a specified registration period. Failure to provide all requested records by the specified deadline constitutes prima facie evidence of a violation of this rule.

(B) Credit for continuing education contact hours shall only be allowed for programs for which the pharmacy technician submits copies of records reflecting that the hours were completed during the specified registration period(s). Any other reported hours shall be disallowed.

(C) A pharmacy technician shall not submit false or fraudulent records to the board.

(7) Pharmacy technicians who are certified by the Pharmacy Technician Certification Board and maintain this certification shall be considered as having met the continuing education requirements of this section and shall not be subject to audit by the board.

[(a) All pharmacy technicians shall be exempt from the continuing education requirements during their initial registration period.]

[(b) All pharmacy technicians must complete 20 contact hours of approved continuing education per renewal period in pharmacy related subjects in order to renew their registration as a pharmacy technician. No more than 10 of the 20 hours may be earned at the pharmacy technician's workplace through in-service education and training under the direct supervision of the pharmacist(s).]

[(c) One hour specified in subsection (a) of this section shall be related to pharmacy law.]

[(d) Pharmacy technicians are required to maintain records of completion of continuing education for three years from the date of reporting the hours on a renewal application. The records must contain at least the following information:]

- [(1) name of participant;]
- [(2) title and date of program;]
- [(3) program sponsor or provider (the organization);]
- [(4) number of hours awarded; and]
- [(5) dated signature of sponsor representative.]

[(e) The board shall audit the records of pharmacy technicians for verification of reported continuing education credit. The following is applicable for such audits:]

[(1) Upon written request, a pharmacy technician shall provide to the board copies of the record required to be maintained in subsection (d) of this section or certificates of completion for all continuing education contact hours reported during a specified registration period. Failure to provide all requested records by the specified deadline constitutes prima facie evidence of a violation of this rule.]

[(2) Credit for continuing education contact hours shall only be allowed for programs for which the pharmacy technician submits copies of records reflecting that the hours were completed during the specified registration period(s). Any other reported hours shall be disallowed.]

[(3) A pharmacy technician shall not submit false or fraudulent records to the board.]

[(f) Pharmacy technicians who are certified by the Pharmacy Technician Certification Board and maintain this certification shall be considered as having met the continuing education requirements of this section and shall not be subject to audit by the board.]

§297.9. *Notifications.*

(a) Display of Registration Certificate.

(1) A [registered] pharmacy technician or pharmacy technician trainee shall publicly display their current registration certificate in their [the technician's] primary place of employment except as noted in paragraph (2) of this subsection.

(2) A [registered] pharmacy technician or pharmacy technician trainee who only works in the inpatient portion of a Class C pharmacy is not required to publicly display their current registration certificate in the pharmacy, provided the pharmacist-in-charge makes and retains a copy of their [the technician's] current registration certificate for inspection by a board representative.

(b) Change of Address and/or Name

(1) Change of address. A pharmacy technician or pharmacy technician trainee shall notify the board electronically or in writing within 10 days of a change of address, giving the old and new address and registration number.

(2) Change of name.

(A) A pharmacy technician or pharmacy technician trainee shall notify the board in writing within 10 days of a change of name by:

(i) - (iii) (No change.)

(B) An amended registration and/or certificate reflecting the new name of the pharmacy technician or pharmacy technician trainee will be issued by the board.

(c) Change of Employment. A pharmacy technician or pharmacy technician trainee shall report electronically or in writing to the board within 10 days of a change of employment giving the name and license number of the old and new pharmacy and registration number.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601668

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 305-8037



CHAPTER 305. EDUCATIONAL REQUIREMENTS

22 TAC §305.1, §305.2

The Texas State Board of Pharmacy proposes amendments to §305.1 and §305.2, concerning Pharmacy Education Requirements and Pharmacy Technician Training Programs. The amendments, if adopted, update the rules to be consistent with other sections in the rules.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Ms. Dodson has determined that, for each year of the first five-year period the amendments will be in effect, the public benefit anticipated as a result of enforcing the amended sections will be to ensure that pharmacy education programs and pharmacy technician training programs meet the minimum required standards. There is no fiscal impact for individuals, small or large businesses or to other entities which are required to comply with the amended sections.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5:00 p.m., May 1, 2006.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §483.042 of the Texas Dangerous Drug Act (Health and Safety Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code.

§305.1. *Pharmacy Education Requirements.*

The minimum standards for the professional practice degree programs of a university, school, or college of pharmacy whose graduates shall be eligible for licensing in this state, shall be the minimum standards required by the Accreditation Council for Pharmacy Education [American Council of Pharmaceutical Education]. The universities, schools, and colleges of pharmacy whose professional practice degree programs have been approved by the board shall be published in the minutes of each annual meeting of the board.

§305.2. *Pharmacy Technician Training Programs.*

(a) (No change.)

(b) Board-approved pharmacy technician training programs.

(1) - (3) (No change.)

(4) The Board may approve pharmacy technician training programs not accredited by the American Society of Health-System Pharmacists provided:

(A) the program meets the American Society of Health-System Pharmacists' Accreditation Standard for Pharmacy Technician Training Programs, modified as follows:

(i) - (ii) (No change.)

(iii) students enrolled in pharmacy technician training programs must have a high school or equivalent diploma [degree], e.g., GED, or they may be currently enrolled in a program which awards such a diploma [degree];

(B) - (D) (No change.)

(5) (No change.)

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601669

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 305-8037



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 448. STANDARD OF CARE

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§448.603, 448.701 and 448.706, concerning the regulation of training, client bill of rights, and restraint and seclusion in chemical dependency treatment facilities.

BACKGROUND AND PURPOSE

The amendments are necessary to implement legislation by the 79th Legislature, Regular Session, 2005. Specifically, amendments to the Health and Safety Code added Chapter 322 (Senate Bill (SB) 325), and, in particular, Subchapter B, relating to the restraint and seclusion of residents in certain health care facilities. These amendments implement requirements relating to chemical dependency treatment facilities.

SECTION-BY-SECTION SUMMARY

Amendments to §448.603(d)(5) add requirements to the restraint and/or seclusion training program. Amendments to §448.701(a) clarify the responsibility of treatment facilities to implement and enforce client rights, and add to the rights for which the facility is responsible the right of the client and the client's legally authorized representative to be notified of the rules and policies related to restraints and seclusion. Amendments to §448.706 add to existing regulation of restraint and seclusion a definition of small residential facilities not subject to the new requirement for an observer when a prone or supine hold is used and define practices to promote the safe, limited, and appropriate use of restraint and seclusion in chemical dependency treatment facilities. Amendments were added specifically governing the use of a prone or supine hold; adding restrictions and safeguards relating to interventions and restraints to reduce their frequency and minimize the risk of harm; and requiring certain actions after an episode of restraint or seclusion to help reduce the frequency and increase the safety of any future use of restraint or seclusion. In addition, to avoid conflict with Health and Safety Code, §322.052(c), language requiring the authorization of personal restraint in certain facilities was removed from the rule. While removing the specific requirement that personal restraint be authorized, the amendment should not be read to prevent or discourage those facilities from retaining authorization for the use of personal restraint, if it could be necessary in certain circumstances to protect the safety of clients or others when less restrictive alternatives have been

exhausted, and thus to fulfill the facility's duty to maintain a safe environment at all times and under all circumstances.

FISCAL NOTE

Kathy Perkins, Director, Healthcare Quality Section, Regulatory Division, has determined that for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed in that costs and workload resulting from the rule amendments will be absorbed within the existing budget.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed because additional training requirements are not expected to increase the cost of meeting existing training requirements. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to ensure that chemical dependency treatment facilities make safe and limited use of restraint and seclusion interventions, appropriately train relevant staff for that purpose, and, in doing so, better protect the welfare of their clients.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specially intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Jane Guerrero, Facility Licensing Group, Regulatory Licensing Unit, Department of State Health Services, 1100 West 49th Street, Mail Code 1980, Austin, Texas 78756, 512/834-6639 or by email to jane.guerrero@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER F. PERSONNEL PRACTICES AND DEVELOPMENT

25 TAC §448.603

STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, §464.009, which authorizes the Executive Commissioner of the Health and Human Services Commission (Executive Commissioner) to adopt rules governing chemical dependency treatment facilities, including their policies and procedures, minimum staffing requirements, protection of client rights, and requirements to ensure client safety, protection, health and comfort; Health and Safety Code, §§322.051, 322.052, and 322.053, which require rulemaking to implement Health and Safety Code, Chapter 322, added by the 79th Legislature, Regular Session, 2005 (SB 325); and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Health and Safety Code, Chapters 322, 464 and 1001, and Government Code, Chapter 531.

§448.603. *Training.*

(a) - (c) (No change.)

(d) The following initial training(s) must be received within the first 90 days of employment and must be completed before the employee can perform a function to which the specific training is applicable. Subsequent training must be completed as specified.

(1) - (4) (No change.)

(5) Restraint and/or Seclusion. All direct care staff in residential programs and programs accepting court commitments that use or authorize the use of restraint or seclusion shall have face-to-face training and demonstrate competency in the safe methods of the specific procedures before assuming job duties involving direct care responsibilities. This includes programs that accept adolescent residential and emergency detentions.

(A) - (C) (No change.)

(D) The training program shall include:

(i) identifying the underlying causes of threatening behaviors exhibited by the clients receiving services;

(ii) identifying aggressive or threatening behavior;

(iii) explaining how the behavior of personnel can affect the behaviors of clients;

(iv) using de-escalation, mediation, self-protection, and other techniques;

(v) recognizing and responding to signs of physical distress in clients who are being restrained;

(vi) identifying the risks associated with positional, compression, or restraint asphyxiation and with prone and supine holds;

(vii) the initiation of seclusion;

(viii) the application of personal restraint;

(ix) the application of approved restraint devices;

(x) monitoring cardiac and respiratory status and interpreting their relevance to the physical safety of the client in restraint or seclusion;

(xi) addressing physical and psychological status and comfort, including signs of distress;

(xii) assisting clients in meeting behavioral criteria for the discontinuation of restraint or seclusion;

(xiii) recognizing readiness for the discontinuation of restraint or seclusion; and

(xiv) recognizing when to contact emergency medical services to evaluate and/or treat a client for an emergency medical condition.

(6) - (7) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER G. CLIENT RIGHTS

25 TAC §448.701, §448.706

STATUTORY AUTHORITY

The proposed amendments are authorized by Health and Safety Code, §464.009, which authorizes the Executive Commissioner of the Health and Human Services Commission (Executive Commissioner) to adopt rules governing chemical dependency treatment facilities, including their policies and procedures, minimum staffing requirements, protection of client rights, and requirements to ensure client safety, protection, health and comfort; Health and Safety Code, §§322.051, 322.052, and 322.053, which require rulemaking to implement Health and Safety Code, Chapter 322, added by the 79th Legislature, Regular Session, 2005 (SB 325); and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Health and Safety Code, Chapters 322, 464 and 1001, and Government Code, Chapter 531.

§448.701. *Client Bill of Rights.*

(a) The facility shall respect, [and] protect, implement and enforce each client right required to be contained in the facility's Client Bill of Rights [clients' rights]. The Client Bill of Rights for all facilities shall include:

(1) - (6) (No change.)

(7) You have the right to be told about the program's rules and regulations before you are admitted, including, without limitation, the rules and policies related to restraints and seclusion. Your legally authorized representative, if any, also has the right to be and shall be notified of the rules and policies related to restraints and seclusion.

(8) - (19) (No change.)

(b) - (c) (No change.)

§448.706. *Restraint and Seclusion.*

(a) A small residential facility is defined as a treatment facility with less than eight licensed beds.

(b) [(a)] The governing body shall adopt a policy to either authorize or prohibit the use of personal restraint, mechanical restraint, and seclusion. [All adolescent residential programs and programs accepting emergency detentions shall authorize use of personal restraint.] Any facility authorizing use of restraint or seclusion shall comply with and have a written procedure that ensures compliance with Health and Safety Code, Chapter 322, including its definition of seclusion; the rules adopted under that chapter; and this section. Outpatient programs shall prohibit the use of restraint or seclusion, except as it relates to court commitment clients.

(c) [(b)] In programs authorizing use of restraint or seclusion, direct care staff shall be trained as described in the applicable provisions of §448.603 [§148.603] of this title (relating to Training). Staff sufficient in number and who have the training required by §448.603 of this title to safely implement any permitted restraint or seclusion shall be on duty at all times.

(d) [(e)] Staff shall not use restraint or seclusion unless it is necessary to intervene to prevent imminent probable death or substantial bodily harm to the client or imminent physical harm to another [a client's behavior endangers the client or others] and less restrictive methods have been tried and failed.

(e) [(d)] Staff shall not use more force than is necessary to prevent imminent harm and shall ensure the safety, well-being, and dignity of clients who are restrained or secluded, including attention for personal needs. Staff shall not deny bathroom privileges, water, sleep, or regularly scheduled meals and snacks.

(f) [(e)] Staff shall obtain authorization from the supervising Qualified Credentialed Counselor (QCC) before starting restraint or seclusion or as soon as possible after initiation or implementation.

(1) The facility shall not use standing authorizations for restraint or seclusion.

(2) Authorization for mechanical restraint or seclusion shall be based on a face-to-face evaluation by the direct care staff initiating or implementing the procedure.

(3) Each authorization shall include a specific time limit, not to exceed 12 hours.

(4) The QCC must take into consideration information that could contraindicate or otherwise affect the use of restraint or seclusion, including information obtained during the initial assessment of each client at the time of admission or intake. This information includes, but is not limited to:

(A) techniques, methods, or tools that would help the client effectively cope with his or her environment;

(B) pre-existing medical conditions or any physical disabilities and limitations, including substance use disorders, that would place the client at greater risk during restraint or seclusion;

(C) any history of sexual or physical abuse that would place the client at greater psychological risk during restraint or seclusion; and

(D) any history that would contraindicate seclusion, the type of restraint (personal or mechanical), or a particular type of restraint device.

(g) [(f)] When the client has been safely restrained or secluded, staff shall tell the client what behavior and timeframes are required for release and shall release the client as soon as the criteria are met.

(h) [(g)] Clinical staff shall review and document alternative strategies for dealing with behaviors necessitating the use of restraint or seclusion for an individual client two or more times in any 30-day period.

(i) [(h)] The chief executive officer of the facility or designee shall review all incident reports involving restraint or seclusion and take action to address unwarranted use of these measures.

(j) [(i)] A client held in restraint shall be under continuous direct observation. The facility shall ensure adequate breathing and circulation during restraint and shall only use devices designed for therapeutic restraint. An acceptable hold is one that engages one or more limbs close to the body to limit or prevent movement and is performed in a manner consistent with the requirements set forth in this section.

(k) [(j)] Seclusion rooms shall be constructed to prevent clients from harming themselves and shall allow staff to observe clients easily in all parts of the room. When a client is in seclusion, staff shall conduct a visual check at least every 15 minutes.

(l) [(k)] Staff shall record the following information in the client record within 24 hours:

(1) the circumstances leading to the use of restraint or seclusion;

(2) the specific behavior necessitating the restraint or seclusion and the behavior required for release;

(3) less restrictive interventions that were tried before restraint or seclusion began;

(4) the signed authorization of the supervising QCC;

(5) the names of the staff members who implemented the restraint or seclusion;

(6) the date and time the procedure began and ended;

(7) the behavior and timeframes required for release;

(8) the client's response;

(9) observations made, including the 15 minute checks; and

(10) attention given for personal needs.

(m) A prone or supine hold shall not be used except as a last resort when other less restrictive interventions have proven to be ineffective. The hold shall be used only to transition a client into another position, and shall not exceed one minute in duration. Except in small residential facilities, when the prone or supine hold is used, an observer, who is trained to identify the risks associated with positional, compression, or restraint asphyxiation and with prone and supine holds, and who is not involved in the restraint, shall ensure the client's breathing is not impaired.

(n) No intervention, voluntary or involuntary, shall be used:

(1) as a means of discipline, retaliation, punishment, or coercion;

(2) for the purpose of convenience of staff members or other individuals; or

(3) as a substitute for effective treatment.

(o) A restraint shall not be used that:

(1) secures a client to a stationary object while the client is in a standing position;

(2) causes pain to restrict a client's movement (pressure points or joint locks);

(3) restricts circulation;

(4) obstructs a client's airway, including a procedure that places anything in, on, or over a client's mouth or nose or puts pressure on the torso;

(5) impairs a client's breathing;

(6) interferes with a client's ability to communicate; or

(7) is inconsistent with training received in compliance with §448.603 of this title (relating to Training).

(p) Use of chemical restraint is prohibited.

(q) Use of restraint or seclusion solely as a behavior therapy program or as part of a behavior therapy program is prohibited.

(r) Immediately following the release of a client from restraint or seclusion, a direct care staff must:

(1) take appropriate action to facilitate the client's reentry into the facility environment by providing the client with transition activities and an opportunity to return to ongoing activities;

(2) observe the client for at least 15 minutes; and

(3) document observations of the client's behavior during this transition period in the client's record.

(s) As soon as possible after an episode of restraint or seclusion, available staff members involved in the episode, supervisory staff, the client, the legally authorized representative, if any, and, with the consent of the client, family members must meet to discuss the episode. The purpose of the debriefing is to:

(1) identify what led to the episode and what could have been handled differently;

(2) identify strategies to prevent future restraint or seclusion, taking into consideration suggestions from the client;

(3) ascertain whether the client's physical well-being, psychological comfort, and right to privacy were addressed;

(4) counsel the client in relation to any trauma that may have resulted from the episode;

(5) when indicated, identify appropriate modifications to the client's treatment plan; and

(6) when clinically indicated or upon request of individuals who witnessed the restraint debrief persons who witnessed the restraint.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2006.

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Cathy Campbell

General Counsel

Department of State Health Services

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For further information, please call: (512) 458-7111 x6972



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 1. EXECUTIVE ADMINISTRATION

SUBCHAPTER C. PROCEDURE FOR PATENTING LAND

31 TAC §1.29, §1.30

The Texas General Land Office (GLO) proposes amendments to 31 TAC, Part 1, Chapter 1, Subchapter C, §1.29, relating to Patent Fees, and §1.30, relating to Scrivener's Error. The proposed amendments reference 31 TAC, Part 1, Chapter 3, for fees relating to Patents and eliminate duplication of agency fees.

The proposed amendments will provide a reference for fees relating to Procedures for Patenting Lands currently in §1.29, and §1.30. The GLO recently organized all the fees and costs the agency charges under 31 TAC, Part 1, Chapter 3. The GLO organized the fees and costs under one rule in order to facilitate the public's use of the agency rules, and the public's understanding of the fees and costs associated with doing business with the GLO. Upon review of its rules, the GLO found that the patent fees in 31 TAC §1.29 and §1.30 were redundant of those found in Chapter 3. In a continued effort to maintain and organize its rules that facilitate the public's ease in access and use of its rules, the GLO proposes the amendments of 31 TAC §1.29 and §1.30.

Larry L. Laine, Chief Clerk of the GLO, has determined that, during the first five years the proposed amended rule is in effect, there will be no fiscal implications for state or local government. Mr. Laine has also determined that there will be no increase in negative fiscal implications for small businesses and individuals as a result of the proposed amendments.

Mr. Laine, Chief Clerk of the GLO, has determined that, during the first five years the proposed amended rule will be in effect, the public will benefit because the amended rule will establish a clear and consistent schedule of charges for access to and copies of public information and will more fairly compensate the state for the cost of providing such service.

Comments may be submitted to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or by email to walter.talley@glo.state.tx.us. In order to be considered, comments must be received no later than thirty (30) days from the date of publication of this notice.

The amendments are proposed under §§31.051, 31.064, 51.174 and 52.324 of the Texas Natural Resources Code which provides the GLO with authorization to promulgate rules and to set and collect certain fees.

Texas Government Code, Chapter 552, and Texas Natural Resources Code, Chapters 31, 32, 33, 51 and 52 are affected by the proposed amendments.

§1.29. Patent Fee.

A patent fee and patent recording fee ~~[in the amount of \$25 and a patent recording fee in the amount of \$2.00]~~ shall be paid in the amount set forth in §3.31 of this title.

§1.30. Scrivener's Error.

In cases where a scrivener's error is found in a patent, a corrected patent shall be issued upon receipt by the General Land Office of an affidavit of ownership by the landowner, requesting issuance of a corrected patent. The original patent shall be returned for cancellation or the affidavit must state the reason why it cannot be returned. No patent fee is required; however, a patent recording fee shall be paid in the amount set forth in §3.31 of this title ~~[in the amount of \$2.00 must be paid]~~.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601675

Trace Finley

Policy Director

General Land Office

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 475-1859



CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The Texas General Land Office (GLO) proposes amendments to 31 TAC, Part 1, Chapter 3, Subchapter C, §3.31, relating to Fees. The proposed amendment will update, revise and include mailing fees for Certified and Registered Mail to reflect current United States Postal Service (USPS) rates.

The GLO recently organized all the fees and costs the agency charges under 31 TAC, Part 1, Chapter 3. The GLO organized the fees and costs under one rule in order to facilitate the public's use of the agency rules, and the public's understanding of the fees and costs associated with doing business with the GLO. Upon review of its rules, the GLO found that the fees for Registered Mail were old and outdated and did not include fees for Certified Mail. In an effort to eliminate changing the rules to keep abreast of anticipated USPS rate increases in the future, the GLO will amend §3.31(b)(11) to convey current rates for Certified and Registered Mail. In a continued effort to maintain and organize its rules that facilitate the public's ease in access and use of its rules, the GLO proposes the amendments of 31 TAC §3.31(b)(11).

Larry L. Laine, Chief Clerk of the GLO, has determined that, during the first five years the proposed amended rule is in effect, there will be no fiscal implications for state or local government. Mr. Laine has also determined that there will be no increase in negative fiscal implications for small businesses and individuals as a result of the proposed amendments.

Mr. Laine, Chief Clerk of the GLO, has determined that, during the first five years the proposed amended rule will be in effect, the public will benefit because the amended rule will establish a clear and consistent schedule of charges for Certified and Registered Mail and will compensate the state for the cost of providing such service.

Comments may be submitted to Mr. Walter Talley, *Texas Register Liaison*, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 463-6311 or by email to walter.talley@glo.state.tx.us. In order to be considered, comments must be received no later than thirty (30) days from the date of publication of this notice.

The amendments are proposed under §§31.051, 31.064, 51.174 and 52.324 of the Texas Natural Resources Code which provides the GLO with authorization to promulgate rules and to set and collect certain fees.

Texas Government Code, Chapter 552, and Texas Natural Resources Code, Chapters 31, 32, 33, 51 and 52 are affected by the proposed amendments.

§3.31. Fees.

(a) (No change.)

(b) General Land Office fees. The commissioner is authorized and required to collect the following fees where applicable.

(1) - (10) (No change.)

(11) Mailing fees:

(A) Mailing Tubes, each: \$3.00.

(B) Registered mail, each item: \$9.75 or current United States Postal Service rate ~~[\$5.50]~~.

(C) (No change.)

(D) Certified mail, each item; \$4.25 or current United States Postal Service rate.

(12) - (16) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200601676

Trace Finley

Policy Director

General Land Office

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER E. CLAIMS PROCESSING--PURCHASE VOUCHERS

34 TAC §5.54

The Comptroller of Public Accounts proposes amendments to §5.54, concerning consulting services contracts.

The primary purpose of the amendments is to conform §5.54 to the changes made to the consulting services statutes during recent legislative sessions.

During the 75th Legislature, 1997, Senate Bill 645 raised the threshold for determining whether a consulting services contract is a "major consulting services contract."

During the 76th Legislature, 1999, Senate Bill 176 amended the consulting services statutes to require a state agency to notify the Legislative Budget Board in writing after the agency contracts for consulting services if the amount of the contract, including any amendment, modification, renewal, or extension, exceeds \$14,000. Any failure to comply with this requirement renders the contract void.

During the 76th Legislature, 1999, House Bill 3211 extended to twenty days the deadline for a state agency's filing of certain information with the secretary of state after the agency renews, amends, or extends a major consulting services contract. The bill also deleted the authorization for a state agency to make payments under a consulting services contract that violated certain procedural requirements of the consulting services statutes after the agency cured the violation.

During the 78th Legislature, 2003, Senate Bill 1652 amended the consulting services statutes so that an institution of higher education's consulting services contract is categorized as a "major consulting services contract" only if the value of the contract exceeds \$25,000. The bill also exempted an institution's major consulting services contract from the requirement to obtain a finding of fact from the governor's Budget and Planning Office if the institution includes in its invitation for offers both a finding of necessity by the institution's chief executive officer and an explanation of that finding.

The second purpose of the amendments is to require a state agency to provide the comptroller upon request with a reference to the pages in the *Texas Register* that demonstrate the agency's compliance with certain publication requirements concerning consulting services contracts.

The third purpose of the amendments is to delete provisions that merely repeat the consulting services statutes.

The fourth purpose of the amendments is to change the supporting documentation requirements that apply when a payment is made under a consulting services contract.

The final purpose of the amendments is to make several non-substantive or technical improvements to §5.54.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the amendments will be in effect, there will be no foreseeable implications relating to costs or revenues of the state or local governments.

Mr. Heleman also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of adopting the amendments will be helping administer the statute that governs state agency purchases of consulting services. The amendments would not have an adverse effect on small businesses or micro-businesses. There is no significant economic cost to individuals who are required to comply with the amendments.

Comments on the proposal may be addressed to Joani Bishop, Manager of Claims Division, P.O. Box 13528, Austin, Texas 78711. If a person wants to ensure that the comptroller considers and responds to a comment made about this proposal, then the person must ensure that the comptroller receives the comment not later than the 30th day after the issue date of the *Texas Register* in which this proposal appears. If the 30th day is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The amendments are proposed under Government Code, §2254.039(a), which requires the comptroller to adopt rules to implement and administer Government Code, Chapter 2254, Subchapter B.

The amendments implement Government Code, Chapter 2254, Subchapter B.

§5.54. Consulting Services Contracts.

(a) Definitions. In [The following words and terms, when used in] this section[, shall have the following meanings, unless the context clearly indicates otherwise.]

(1) "Consultant" has the meaning assigned by Government Code, §2254.021(3).

(2) [(4)] "Consulting service" means a [Consulting service—A] study conducted for a state agency or advice provided to a state agency under a contract that does not involve the traditional relationship of employer and employee. The term does not include a routine service that is necessary to the functioning of a state agency's programs.

(3) [(2)] "Executive director" means the [Executive director—The] individual who is the chief administrative officer of a state agency. The term excludes a member of a governing body.

[(3) Executive head—]

[(A) the elected or appointed state official who is authorized by law to administer a state agency if the agency is not headed by a governing body; or]

[(B) the executive director of a state agency if the agency is headed by a governing body.]

(4) "Institution of higher education" has the meaning assigned by Education Code, §61.003 except the term does not include a public junior college or a community college. [Major consulting services contract—A consulting services contract for which it is reasonably foreseeable that the value of the contract will exceed \$10,000.]

(5) "Major consulting services contract" has the meaning assigned by Government Code, §2254.021(2). [Person—Includes an individual, a corporation, an organization, a government or governmental subdivision or agency, a business trust, an estate, a trust, a partnership, an association, and any other legal entity.]

(6) "State agency" has the meaning assigned by Government Code, §2151.002(2). [Private consultant—A person that provides or proposes to provide a consulting service.]

(7) "USAS" means the uniform statewide accounting system. [State agency—]

[(A) any department, commission, board, office, or other agency in the executive branch of state government created by the constitution or a statute of this state, except the Texas High-Speed Rail Authority;]

[(B) the Supreme Court of Texas, the Court of Criminal Appeals of Texas, a court of appeals, or the Texas Judicial Council; or]

{{C}} a university system or an institution of higher education as defined in the Education Code, §61.003, other than a public junior college-]

(b) Applicability of this section. This section applies to a consulting service only to the extent Government Code, Chapter 2254, Subchapter B, applies to that service.[a state agency purchases with funds:]

{{(1}} appropriated by the Texas legislature;]

{{(2}} derived from the exercise of the statutory duties of a state agency, regardless of whether the Texas legislature has appropriated those funds; or]

{{(3}} received from the federal government, unless the application of a federal law or regulation conflicts with the application of this section-]

{{(e}} Exemptions:]

{{(1}} This section does not apply to consulting services provided by:]

{{(A}} a practitioner of a professional service as defined under the Texas Government Code, §2254.002(2), Professional Services Procurement Act;]

{{(B}} a private legal counsel;]

{{(C}} an investment counselor;]

{{(D}} an actuary;]

{{(E}} a medical service provider; or]

{{(F}} a dental service provider-]

{{(2}} This paragraph applies if the governing board of a retirement system trust fund determines that consulting services are necessary for the performance of the board's constitutional fiduciary duties. Unless paragraph (1) of this subsection makes this section inapplicable to those services, only the requirements of subsection (i)(1) of this section apply to the purchase of the services-]

{{(3}} The comptroller, the governor, and the General Services Commission may jointly decide to subject the purchase of a particular consulting service to the procedures required by Texas Civil Statutes, Article 601b, State Purchasing and General Services Act, Article 3, instead of the procedures required by this section. They may make this decision only if:]

{{(A}} they conclude that using the procedures required by the State Purchasing and General Services Act, Article 3, would be more advantageous to the state; and]

{{(B}} they each adopt by rule a memorandum of understanding that states the substance of their decision-]

{{(c}} [(d)] Effect of noncompliance with this section or applicable statutes.

(1) If a state agency contracts for a consulting service [services] or renews, amends, or extends a consulting services contract without complying with the requirements of subsection (d) [subsections (h), (i)(1), and (j)] of this section and Government Code, §§2254.029, 2254.030, 2254.0301, and 2254.033, then the contract, renewal, amendment, or extension is void.

{{(2}} A major consulting services contract that a state agency enters into without first obtaining the finding of fact from the governor's Budget and Planning Office as required by subsection (g)(3) of this section is void-]

{{(3}} If a private consultant contracts with a state agency without complying with the requirements of subsection (m)(1)-(3) of this section, then the contract is void-]

(2) [(4)] If [When] a contract, renewal, amendment, or extension is void under paragraph (1) of this subsection, then the comptroller may not:

(A) draw a warrant or transmit funds to satisfy an obligation under the contract, renewal, amendment, or extension; or

(B) reimburse a state agency for a payment made under the contract, renewal, amendment, or extension.

(3) [(5)] If [When] a contract, renewal, amendment, or extension is void under paragraph (1) of this subsection, then a state agency may not make any payments under the contract, renewal, amendment, or extension from any state or federal funds held in or outside the state treasury [until the agency has complied with subsections (h), (i)(1), and (j) of this section, as applicable].

{{(e}} Necessity for consulting services. A state agency may use a private consultant only if:]

{{(1}} there is a substantial need for the consulting services; and]

{{(2}} the agency cannot adequately perform the consulting services with its own personnel or through a contract with another state agency-]

{{(f}} Selection of private consultants-]

{{(1}} In selecting a private consultant, a state agency shall:]

{{(A}} base its choice on demonstrated competence, knowledge, and qualifications; and on the reasonableness of the proposed fee for the services; and]

{{(B}} if other considerations are equal, give preference to a private consultant whose primary place of business is within the state or who will manage the consulting engagement wholly from an office in the state-]

{{(2}} A state agency may not accept a person's offer or proposal to provide consulting services to the agency if:]

{{(A}} the person received compensation from the agency to participate in the preparation of the specifications or request for proposals on which the offer is based; and]

{{(B}} the person would receive compensation from the agency for providing the services-]

{{(g}} Notice of intent to employ a private consultant. Before entering into a major consulting services contract, a state agency shall:]

{{(1}} notify the Legislative Budget Board and the governor's Budget and Planning Office of the agency's intent to contract with a private consultant;]

{{(2}} give information to the Legislative Budget Board and the governor's Budget and Planning Office to demonstrate that the agency has complied or will comply with subsections (e) and (f)(1) of this section; and]

{{(3}} obtain a finding of fact from the governor's Budget and Planning Office that the consulting services are necessary-]

{{(h}} Publication before entering into a major consulting services contract-]

{{(1}} Not later than the 30th day before the date it enters into a major consulting services contract, a state agency shall file a docu-

ment with the secretary of state for publication in the Texas Register. The document must:}

{{(A) invite private consultants to provide offers of consulting services to the agency;}}

{{(B) identify the individual employed by the agency who should be contacted by a private consultant who intends to provide an offer;}}

{{(C) specify the closing date for the receipt of offers; and}}

{{(D) describe the procedure by which the state agency will award the contract.}}

{{(2) If the consulting services sought by a state agency relate to services previously provided by a private consultant, the agency must disclose that fact in the invitation for offers required by paragraph (1)(A) of this subsection. If the agency intends to award the contract to the private consultant that previously provided the services unless a better offer is received, the agency must also disclose this intention in the invitation for offers.}}

{{(i) Publication and notification after entering into a major consulting services contract.}}

{{(1) Not later than the tenth day after the date of entering into a major consulting services contract, a state agency shall file with the secretary of state for publication in the Texas Register:}}

{{(A) a description of the activities that the private consultant will conduct;}}

{{(B) the name and business address of the private consultant;}}

{{(C) the total value of the contract;}}

{{(D) the beginning and ending dates of the contract; and}}

{{(E) the dates on which documents, films, recordings, or reports that the private consultant is required to present to the agency are due.}}

{{(2) The General Appropriations Act for the fiscal biennium ending August 31, 1995, contains the following provision: A state agency must provide the information listed in paragraph (1)(A) - (E) of this subsection to the Legislative Budget Board, the House Appropriations Committee, the Senate Finance Committee, and other appropriate legislative committees. The agency must provide the information not later than the tenth day after the date the agency enters into the major consulting services contract.}}

{{(d) [(j)] Renewals, amendments, or extensions[; or amendments] of consulting services contracts.}}

{{(1) A state agency must comply with this paragraph when the agency intends to renew, amend, or extend a major consulting services contract.}}

{{(A) If the renewal contract itself is not a major consulting services contract or if the contract after the amendment or extension is no longer a major consulting service contract, then the agency shall file the information required by Government Code, §2254.030 [subsection (i)(1) of this section] with the secretary of state for publication in the *Texas Register*. The information must be filed not later than the 20th [tenth] day after either the date the renewal contract is entered into or the date the original contract is amended or extended.}}

{{(B) If the renewal contract itself is a major consulting services contract or if the contract after the amendment or extension

is still a major consulting services contract, then the agency shall comply with the requirements of Government Code, §2254.028(a) and §2254.029 [subsections (g) and (h) of this section].}}

{{(2) A state agency that intends to renew, amend, or extend a consulting services contract that is not a major consulting services contract shall comply with the requirements of Government Code, §2254.028(a) and §2254.029 [subsections (g) and (h) of this section] if the original contract and either the renewal contract, the amendment, or the extension have a reasonably foreseeable value totaling more than \$15,000 if the agency is not an institution of higher education or \$25,000 if the agency is an institution of higher education [\$10,000].}}

{{(3) A state agency must comply with this paragraph when the agency intends to extend or amend a major consulting services contract.}}

{{(A) If the contract after the amendment or extension is no longer a major consulting services contract, then the agency shall file the information required by subsection (i)(1) of this section with the secretary of state for publication in the Texas Register. The information must be filed not later than the tenth day after the date the contract is amended or extended.}}

{{(B) If the contract after the amendment or extension is still a major consulting services contract, then the agency shall comply with the requirements of subsections (g) and (h) of this section.}}

{{(4) A state agency that intends to extend or amend a consulting services contract that is not a major consulting services contract shall comply with the requirements of subsections (g) and (h) of this section if the original contract and the amendment or extension have a reasonably foreseeable value totaling more than \$10,000.}}

{{(k) Dividing contracts. A state agency may not divide a consulting services contract or a renewal, amendment, or extension of a consulting services contract into more than one contract, renewal, amendment, or extension to avoid the requirements of this section.}}

{{(l) Reporting of financial interests.}}

{{(1) This subsection applies only to an officer or employee of a state agency who has a financial interest or who is related within the second degree of consanguinity or affinity to an individual who has a financial interest in a private consultant that submits an offer to provide consulting services to the agency. For the purpose of this subsection, degrees of relationship must be determined in accordance with the Texas Government Code, Chapter 573.}}

{{(2) An officer or employee of a state agency shall report the financial interest to the executive head of the agency not later than the tenth day after the date on which the private consultant submits the offer.}}

{{(3) This subsection applies to all consulting services contracts and renewals, amendments, and extensions of those contracts.}}

{{(m) Consulting services provided by former state employees.}}

{{(1) Paragraphs (2) and (3) of this subsection apply only to an individual who has been employed by a state agency at anytime during the two years preceding the date on which the individual offers to perform a consulting service for a state agency.}}

{{(2) An individual shall disclose in an offer to perform a consulting service for a state agency:}}

{{(A) the nature of the individual's employment with the agency or another state agency;}}

{{(B) the date the employment was terminated; and}}

~~{(C) the annual rate of compensation for the employment at the time of termination.}~~

~~{(3) A state agency that accepts an offer to provide consulting services from an individual described in paragraph (1) of this subsection must include, in the information filed under subsection (i)(1) of this section, a statement about:}~~

~~{(A) the individual's employment with a state agency; and}~~

~~{(B) the nature of that employment.}~~

~~{(4) Notwithstanding anything else in this section, a state department or agency may not use funds appropriated by the General Appropriations Act to make a payment under a consulting services contract with an individual who was employed by that department or agency at anytime during the 12 months before the contract was entered into.}~~

~~{(n) Archives.}~~

~~{(1) After a state agency's contract with a private consultant has ended, the agency shall, upon request, supply the Legislative Budget Board and the governor's Budget and Planning Office with a copy of each document, film, recording, or report developed by the consultant under the contract.}~~

~~{(2) A state agency shall file with the Texas State Library a copy of each document, film, recording, or report developed by the private consultant.}~~

~~{(o) Actions by state agencies on recommendations from private consultants. As part of the biennial budgetary hearing process conducted by the Legislative Budget Board and the governor's Budget and Planning Office, a state agency shall report to each of them on any actions taken in response to the recommendations of any private consultant with whom the agency contracts during the previous biennium.}~~

~~{(p) Emergency purchases of consulting services. A state agency that needs private consulting services before compliance with this section can be completed because of an unforeseen emergency shall comply with the governor's rules about emergency waivers of the requirements of this section.}~~

~~{(q) Mixed contracts. This section applies to a contract that involves both consulting and other services if the primary objective of the contract is the acquisition of consulting services.}~~

~~{(r) Competitive bidding. This section neither requires nor prohibits the use of competitive bidding procedures to purchase consulting services.}~~

~~{(e) [(s)] Procurement of consulting services by the Texas Building and Procurement [General Services] Commission.}~~

~~{(1) At the request of a state agency, the General Services Commission is required to procure consulting services for the agency.}~~

~~{(2) If [When] the Texas Building and Procurement [General Services] Commission procures a consulting service [services] for a state agency under Government Code, §2254.040, then[:]}~~

~~{(A) the commission may require the agency to reimburse the commission for the costs incurred by the commission in procuring the services; and}~~

~~{(B)} the commission must comply with any [the] requirements of this section and Government Code, Chapter 2254, Subchapter B that would apply if the agency were procuring the consulting service [services] directly.}~~

~~{(f) [(t)] Purchase document requirements.}~~

(1) In addition to the requirements of paragraph (2) of this subsection, the purchase document submitted to the comptroller that requests payment under a contract subject to that paragraph must be supported by the following documentation [This paragraph applies when a purchase document is submitted to the comptroller that requests a payment under a consulting services contract that is not a major consulting services contract. The document must contain the following information in the appropriate descriptive/legal text screen of USAS and be supported by the following documentation]:

(A) a copy of the original contract and, if the contract has been renewed, amended, or extended, a copy of the renewal, amendment, or extension [the reasonably foreseeable value of the contract];

(B) a copy of any written notice provided to the Legislative Budget Board under Government Code, §2254.0301 if the amount of the contract, including any renewal, amendment, or extension, exceeds \$14,000; and [the cumulative total of prior payments made under the contract];

(C) a statement that the payment complies with Government Code, §§2155.004(a) - (b), 2254.026, 2254.027, and 2254.033. [a copy of the contract if the copy has not already been provided to the comptroller; and]

~~{(D) a statement that the payment complies with subsections (e), (f), and (m) of this section.}~~

(2) This paragraph applies when a purchase document is submitted to the comptroller that requests a payment under either a major consulting services contract (or a renewal, amendment, or extension of a major consulting services contract) or a contract that was not originally a major consulting services contract but whose value after renewal, amendment, or extension totals more than \$15,000 if the payer is not an institution of higher education or \$25,000 if the payer is an institution of higher education. In addition to the requirements of paragraph (1) of this subsection, the[The] document must [contain the following information in the appropriate descriptive/legal text screen of USAS and]be supported by the following documentation:

~~{(A) the reasonably foreseeable value of the contract;}~~

~~{(B) the cumulative total of prior payments made under the contract;}~~

~~{(C) a copy of the contract if the copy has not already been provided to the comptroller;}~~

(A) ~~{(D)}~~a reference to the volume and page numbers [number] of the *Texas Register* in which the requirements of Government Code, §2254.029 and §2254.030, and, if applicable, Government Code, §2254.028(c) and §2254.033(b) [subsections (h), (i)(1), and, if applicable, (m)(3) of this section] were fulfilled; and

(B) ~~{(E)}~~ a copy of the governor's finding of fact that the consulting services are necessary if the finding is required by Government Code, §§2254.028, 2254.031(a)(2), or 2254.031(c)(2), or by any combination of those statutes.[eopy has not already been provided to the comptroller; and]

~~{(F) a statement that the payment complies with subsections (e), (f), and (m) of this section.}~~

(3) This paragraph applies when a purchase document is submitted to the comptroller that requests a payment under a renewed consulting services contract if the original contract was a major consulting services contract.}

~~{(A) This subparagraph applies if the renewal contract itself is not a major consulting services contract. The document must~~

contain the following information in the appropriate descriptive/legal text screen of USAS and be supported by the following documentation:}]

[(i) the reasonably foreseeable value of the original contract;]

[(ii) the reasonably foreseeable value of the renewal contract;]

[(iii) the cumulative total of prior payments made under the original contract;]

[(iv) the cumulative total of prior payments made under the renewal contract;]

[(v) a copy of the original contract if the copy has not already been provided to the comptroller;]

[(vi) a copy of the renewal contract if the copy has not already been provided to the comptroller;]

[(vii) the volume and page number of the Texas Register in which the requirements of subsections (h), (i)(1), and, if applicable, (m)(3) of this section were fulfilled when the original contract was entered into;]

[(viii) the volume and page number of the Texas Register in which the requirements of subsection (j)(1)(A) of this section were fulfilled when the renewal contract was entered into;]

[(ix) a copy of the governor's finding of fact that the consulting services under the original contract are necessary if the copy has not already been provided to the comptroller; and]

[(x) a statement that the payment complies subsections (e), (f), and (m) of this section.}]

[(B) This subparagraph applies if the renewal contract itself is a major consulting services contract. The document must contain the following information in the appropriate descriptive/legal text screen of USAS and be supported by the following documentation:}]

[(i) the reasonably foreseeable value of the original contract;]

[(ii) the reasonably foreseeable value of the renewal contract;]

[(iii) the cumulative total of prior payments made under the original contract;]

[(iv) the cumulative total of prior payments made under the renewal contract;]

[(v) a copy of the original contract if the copy has not already been provided to the comptroller;]

[(vi) a copy of the renewal contract if the copy has not already been provided to the comptroller;]

[(vii) volume and page number of the Texas Register in which the requirements of subsections (h), (i)(1), and, if applicable, (m)(3) of this section were fulfilled when the original contract was entered into;]

[(viii) the volume and page number of the Texas Register in which the requirements of subsection (j)(1)(B) of this section were fulfilled when the renewal contract was entered into;]

[(ix) a copy of the governor's finding of fact that the consulting services under the original contract are necessary if the copy has not already been provided to the comptroller;]

[(x) a copy of the governor's finding of fact that the consulting services under the renewal contract are necessary if the copy has not already been provided to the comptroller; and]

[(xi) a statement that the payment complies with subsections (e), (f), and (m) of this section.}]

[(4) This paragraph applies when a purchase document is submitted to the comptroller that requests a payment under a renewed consulting services contract if the original contract was not a major consulting services contract.}]

[(A) This subparagraph applies if the original contract and the renewal have a reasonably foreseeable value totaling more than \$10,000. The document must contain the following information in the appropriate descriptive/legal text screen of USAS and be supported by the following documentation:}]

[(i) the reasonably foreseeable value of the original contract;]

[(ii) the reasonably foreseeable value of the renewal contract;]

[(iii) the cumulative total of prior payments made under the original contract;]

[(iv) the cumulative total of prior payments made under the renewal contract;]

[(v) a copy of the original contract if the copy has not already been provided to the comptroller;]

[(vi) a copy of the renewal contract if the copy has not already been provided to the comptroller;]

[(vii) the volume and page number of the Texas Register in which the requirements of subsection (j)(2) of this section were fulfilled when the renewal contract was entered into;]

[(viii) a copy of the governor's finding of fact that the consulting services under the renewal contract are necessary if the copy has not already been provided to the comptroller; and]

[(ix) a statement that the payment complies with subsections (e), (f), and (m) of this section.}]

[(B) This subparagraph applies if the original contract and the renewal have a reasonably foreseeable value totaling \$10,000 or less. The document must contain the following information in the appropriate descriptive/legal text screen of USAS and be supported by the following documentation:}]

[(i) the reasonably foreseeable value of the original contract;]

[(ii) the reasonably foreseeable value of the renewal contract;]

[(iii) the cumulative total of prior payments made under the original contract;]

[(iv) the cumulative total of prior payments made under the renewal contract;]

[(v) a copy of the original contract if the copy has not already been provided to the comptroller;]

[(vi) a copy of the renewal contract if the copy has not already been provided to the comptroller;]

[(vii) a statement that the payment complies with subsections (e), (f), and (m) of this section.}]

{(5) This paragraph applies when a purchase document is submitted to the comptroller that requests a payment under an extended or an amended consulting services contract if the original contract was a major consulting services contract;}

{(A) This subparagraph applies if the contract after the extension or amendment is still a major consulting services contract. The document must contain the following information in the appropriate descriptive/legal text screen of USAS and be supported by the following documentation:}

{(i) the reasonably foreseeable value of the original contract;}

{(ii) the reasonably foreseeable value of the contract after the extension or amendment;}

{(iii) the cumulative total of prior payments made under the original contract;}

{(iv) the cumulative total of prior payments made under the contract after the extension or amendment took effect;}

{(v) a copy of the original contract if the copy has not already been provided to the comptroller;}

{(vi) a copy of the extension or amendment if the copy has not already been provided to the comptroller;}

{(vii) the volume and page number of the Texas Register in which the requirements of subsections (h), (i)(1), and, if applicable, (m)(3) of this section were fulfilled when the original contract was entered into;}

{(viii) the volume and page number of the Texas Register in which the requirements of subsection (j)(3)(B) of this section were fulfilled when the extension or amendment was entered into;}

{(ix) a copy of the governor's finding of fact that the consulting services under the original contract are necessary if the copy has not already been provided to the comptroller; and}

{(x) a copy of the governor's finding of fact that the consulting services under the contract after the extension or amendment are necessary if the copy has not already been provided to the comptroller; and}

{(xi) a statement that the payment complies with subsections (e), (f), and (m) of this section.}

{(B) This subparagraph applies if the contract after the extension or amendment is no longer a major consulting services contract. The document must contain the following information in the appropriate descriptive/legal text screen of USAS and be supported by the following documentation:}

{(i) the reasonably foreseeable value of the original contract;}

{(ii) the reasonably foreseeable value of the contract after the extension or amendment;}

{(iii) the cumulative total of prior payments made under the original contract;}

{(iv) the cumulative total of prior payments made under the contract after the extension or amendment took effect;}

{(v) a copy of the original contract if the copy has not already been provided to the comptroller;}

{(vi) a copy of the extension or amendment if the copy has not already been provided to the comptroller;}

{(vii) the volume and page number of the Texas Register in which the requirements of subsections (h), (i)(1), and, if applicable, (m)(3) of this section were fulfilled when the original contract was entered into;}

{(viii) the volume and page number of the Texas Register in which the requirements of subsection (j)(3)(A) of this section were fulfilled when the extension, or amendment was entered into;}

{(ix) a copy of the governor's finding of fact that the consulting services under the original contract are necessary if the copy has not already been provided to the comptroller; and}

{(x) a statement that the payment complies with subsections (e), (f), and (m) of this section.}

{(6) This paragraph applies when a purchase document is submitted to the comptroller that requests a payment under an extended or an amended consulting services contract if the original contract was not a major consulting services contract.}

{(A) This subparagraph applies if the original contract and the extension or amendment have a reasonably foreseeable value totaling more than \$10,000. The document must contain the following information in the appropriate descriptive/legal text screen of USAS and be supported by the following documentation:}

{(i) the reasonably foreseeable value of the original contract;}

{(ii) the reasonably foreseeable value of the extension or amendment;}

{(iii) the cumulative total of prior payments made under the original contract;}

{(iv) the cumulative total of prior payments made under the contract after the extension or amendment took effect;}

{(v) a copy of the original contract if the copy has not already been provided to the comptroller;}

{(vi) a copy of the extension or amendment if the copy has not already been provided to the comptroller;}

{(vii) the volume and page number of the Texas Register in which the requirements of subsections (j)(4) and, if applicable, (m)(3) of this section were fulfilled when the extension or amendment was entered into;}

{(viii) a copy of the governor's finding of fact that the consulting services under the extension or amendment are necessary if the copy has not already been provided to the comptroller; and}

{(ix) a statement that the payment complies with subsections (e), (f), and (m) of this section.}

{(B) This subparagraph applies if the original contract and the extension or amendment have a reasonably foreseeable value totaling \$10,000 or less. The document must contain the following information in the appropriate descriptive/legal text screen of USAS and be supported by the following documentation:}

{(i) the reasonably foreseeable value of the original contract;}

{(ii) the reasonably foreseeable value of the extension or amendment;}

{(iii) the cumulative total of prior payments made under the original contract;}

~~{(iv) the cumulative total of prior payments made under the contract after the extension or amendment took effect;}~~

~~{(v) a copy of the original contract if the copy has not already been provided to the comptroller;}~~

~~{(vi) a copy of the extension or amendment if the copy has not already been provided to the comptroller; and}~~

~~{(vii) a statement that the payment complies with subsections (e), (f), and (m) of this section.}~~

(3) ~~{(7)} A [When a] state agency that has received the governor's [an] emergency waiver of the requirements of Government Code, Chapter 2254, Subchapter B must include[this section from the governor; the agency must submit] a copy of the [emergency] waiver in the supporting documentation for the contract for which the waiver was received [with each purchase document submitted to the comptroller to request a payment under the consulting services contract covered by the waiver].~~

(4) A state agency shall retain the supporting documentation required by this paragraph and provide that documentation to the comptroller as required by §5.51 of this title (relating to Requirements for Purchase Documents).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2006.

TRD-200601703

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 475-0387



PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER C. TEXAS SCHOOL EMPLOYEES GROUP HEALTH (TRS-ACTIVECARE)

34 TAC §§41.42 - 41.44, 41.53

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Teacher Retirement System of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) proposes the repeal of the following rules concerning certain TRS pass-through funding programs that have been transferred or are unfunded: 34 TAC §41.42, relating to the payment of supplemental compensation; 34 TAC §41.43, relating to the payment of state assistance for meeting minimum effort; 34 TAC §41.44, relating to the payment of additional support for certain school districts paying Social Security taxes; and 34 TAC §41.53, relating to the waiting period for supplemental compensation.

Recent legislation (Senate Bill 1691 and Senate Bill 1863, 79th Texas Legislature, Regular Session) transfers the functions and duties relating to the compensation supplementation program from TRS to the Texas Education Agency (TEA), effective September 1, 2005. As of this date, TRS has completed all functions relating to the compensation supplementation program, including the final payment of fiscal year 2005 supplemental compensation. Accordingly, the Board proposes to repeal related TRS rules §41.42, concerning the payment of supplemental compensation, and §41.53, concerning the waiting period for supplemental compensation.

The payment of state assistance for meeting minimum effort was established during the 77th Texas Legislature, Regular Session, by Texas Insurance Code Article 3.50-9, now recodified as Chapter 1581 of the Texas Insurance Code. Funding for this assistance was provided through fiscal year 2004; no funding has since been provided by the Texas Legislature. Future funding for this assistance does not seem likely to occur. Accordingly, the Board proposes to repeal related TRS rule §41.43, concerning the payment of state assistance for meeting minimum effort.

The payment of additional support for certain school districts paying Social Security taxes was also established during the 77th Texas Legislature, Regular Session, by Texas Insurance Code Article 3.50-9, recodified as Chapter 1581 of the Texas Insurance Code. Funding for this support was provided through fiscal year 2003; no funding has since been provided by the Texas Legislature. Future funding for this support does not appear likely to occur. Accordingly, the Board proposes to repeal related TRS rule §41.44, concerning the payment of additional support for certain school districts paying Social Security taxes.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that for each year of the first five years the proposed repeals will be in effect, there will be no foreseeable implications relating to cost or revenues of state or local governments as a result of enforcing or administering the repeals.

Mr. Galaviz has also determined that, for each of the first five years the repeals as proposed will be in effect, the anticipated public benefit will be the avoidance of confusion concerning TRS pass-through funding programs that have been transferred or are unfunded. There will be no measurable economic cost to persons required to comply with the proposed repeals. Because there will be no measurable effect on a local economy or local employment because of the proposed repeals, no local employment impact statement is required under §2001.022, Government Code. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the repealed sections as proposed.

Comments on the proposed repeals may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River, Austin, Texas 78701. The deadline for comments is 30 days after publication in the *Texas Register*.

Statutory Authority: The repeals are proposed under §825.102, Government Code, which authorizes the Board to adopt rules for the administration of TRS funds and for the transaction of Board business; in addition, the repeal of TRS §41.44 is proposed under §1581.703, Insurance Code, which authorizes TRS to adopt rules as necessary to implement Chapter 1581, Subchapter O, Insurance Code, relating to additional support for certain school districts paying Social Security taxes.

Cross-Reference to Statute: For the proposed repeals of §41.42 and §41.53--Act of May 27, 2005, 79th Legislature, Regular

Session, Senate Bill 1691, §56, Chapter 1359, and Act of May 29, 2005, 79th Legislature, Regular Session, Senate Bill 1863, §18.07, Chapter 899, which transfer the functions and duties of TRS with respect to the compensation supplementation program established under Chapter 1580, Insurance Code, and other applicable law, and any appropriation relating to that program are transferred to TEA and providing that a reference in law to TRS with respect to the compensation supplementation program means TEA; for the proposed repeal of §41.43--Chapter 1581, Subchapter C, Insurance Code, relating to state assistance for meeting minimum effort; and for the proposed repeal of §41.44--Chapter 1581, Subchapter O, Insurance Code, relating to additional support for certain school districts paying Social Security taxes.

§41.42. Payment of Supplemental Compensation.

§41.43. Payment of State Assistance for Meeting Minimum Effort.

§41.44. Payment of Additional Support for Certain School Districts Paying Social Security Taxes.

§41.53. Waiting Period for Supplemental Compensation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601670

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 542-6438



PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 308. BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §§308.1 - 308.3

The State Board of Trustees of the Texas Emergency Services Retirement System proposes to amend 34 Texas Administrative Code Chapter 308, §§308.1 - 308.3, governing benefits from the Texas Emergency Services Retirement System (System). The rule amendment is effective January 1, 2007.

The proposed amendment would reduce benefits for volunteer fire fighters and EMS personnel in departments that participate in the System. The proposed amendment to §308.1 would reduce benefits by eliminating partial vesting for active members with less than 10 years of qualified service. The proposed amendment to §308.2 reduces the benefit formula compound interest rate from 7% to 6.2% for all years of qualified service over 15 years. The amendment to §308.2 also provides a procedure for initiating and terminating benefits. The amendment to §308.3 clarifies the amount of disability payments.

If adopted, the amendment would "grandfather" active member's vested accrued benefits for retirement, termination, or death as

of December 31, 2006. The System would calculate the amount of every vested member's vested accrued benefit as of December 31, 2006 and keep a record of this amount as each person's minimum benefit. Upon termination, death, or retirement, the System would pay the larger of the benefits under the new reduced benefit formula and the minimum benefit. Vested terminated members at the effective date of the changes would not be affected by the rule amendment.

The actuarial effect of the amended rule was determined by the actuarial firm of Rudd and Wisdom, Inc. As of August 31, 2004, Rudd and Wisdom, Inc. reported that the Fund is not adequately financed on an actuarially sound basis and that the Fund had an annual contribution deficiency of \$1.2 million for the year beginning September 1, 2004. By special actuarial study of February 27, 2006, Rudd and Wisdom, Inc. estimated that the amendment would reduce the annual required contributions for a 30-year amortization of the System's unfunded actuarial accrued liability by \$282,642. This would result in just slightly more reduction in the required contributions than necessary to have an amortization period of exactly 30 years anticipating maximum state contributions for 30 years.

Kevin Deiters, Program Director, has determined that for the first five years that the amended rules are in effect that state and local contributions to the pension system will increase. Although the amendments to Chapter 308 will reduce actuarial liabilities, the Rudd and Wisdom actuarial analysis is based upon the Board's adoption of amendments to §310.6 increasing minimum contribution rates to \$36 per member per month by September 1, 2011. Under the proposed amendment to §310.6, total local contributions in the years 2006 through 2010 will increase by \$1.8 million from \$8.2 million to \$10.0 million. Total state contributions will increase by \$585 thousand from \$2.7 million to \$3.3 million. There is no anticipated economic cost to small businesses or individuals by the adoption of the amendments.

Mr. Deiters has also determined that for each year of the first five year period the amendments are in effect the public benefit anticipated will be to protect the vested accrued benefits of current members of the retirement system while improving the ability of the pension system to pay future pension benefits. Changes in the retirement formula and vesting period will reduce future pension benefit payments and improve the long-term actuarial status of the system. The elimination of partial vesting for service under 10 years increase the retention of experienced firefighters and EMS personnel in participating departments.

Comments on the proposal may be submitted in writing to Lisa Ivie Miller, Commissioner, Office of the Fire Fighter Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than May 15, 2006. Comments may also be submitted electronically to rules@ffpc.state.tx.us or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H Texas Emergency Services Retirement System.

No other statutes, articles, or codes are affected by the proposed amendments.

§308.1. Eligibility for Retirement Annuity.

(a) A member is eligible to retire and receive a service retirement annuity with full benefits from the pension system when the member has at least 15 years of qualified service credited in the system and has attained the age of 55.

(b) Partial vesting to receive a service retirement annuity accrues at the following rates:

(1) 50 [25] percent after the first 10 [five] years of credited qualified service; and

[(2) five percent a year for the next five years of credited qualified service; and]

(2) [(3)] 10 percent a year for the next five years of credited qualified service.

(c) Vested retirement benefits, including partially vested benefits, are nonforfeitable. A retirement benefit also becomes nonforfeitable when a member attains normal retirement age or, to the extent funded, on the termination or partial termination of the pension system or the complete discontinuance of contributions to the pension system. A person whose retirement benefit met a partial vesting requirement as it existed on December 31, 2006, is eligible to retain that eligibility and the base amount of that benefit as it existed on that date.

§308.2. Service Retirement Annuity.

(a) In this section, normal retirement age is the later of the month a member completes 15 years of credited qualified service or attains the age of 55, and early retirement age is the age of 55.

(b) A member who has terminated service with all participating departments may apply for a service retirement annuity by filing an application for retirement with the commissioner. The application may not be filed more than one calendar month before the date the member wishes to retire and must designate a retirement date, which may not precede the date of filing or the date of first eligibility to retire. The effective date of a member's retirement is the first day of the calendar month after which a member files an application that meets the requirements of this subsection.

(c) The local board of trustees shall hold a hearing on an application for service retirement within 15 days of the date of notice by the commissioner of the filing of the application.

(d) A monthly service retirement annuity is payable for the period beginning on the effective date of retirement through the month in which the retiree dies but is not payable for any month for which the retiree was eligible to retire but did not.

(e) [(b)] A service retirement annuity is payable in equal monthly installments to a member who terminates service after attaining early retirement age or normal retirement age, subject to the vesting requirements of §308.1 of this title.

(f) [(e)] Except as otherwise provided by this section, the monthly service retirement annuity is equal to six times the governing body's average monthly contribution during the retiring member's term of qualified service.

(g) [(d)] For credited qualified service in excess of 15 years, a retiring member is entitled to receive an additional 6.2 [seven] percent of the annuity compounded annually and adjusted for days or months of credited qualified service that constitute less than a year.

(h) Notwithstanding subsection (g) of this section, a person who had more than 15 years of qualified service as of December 31, 2006, is entitled to a service retirement annuity computed as the greater of the amount that existed on that date or the amount computed under the formula in effect on the date the person terminates service with all participating departments.

§308.3. Disability Retirement Annuity.

(a) Except as otherwise provided by §864.004 and §865.006, Government Code, and this section, a member whose disability results

from performing emergency service duties is entitled to a monthly annuity during the period of the disability in an amount equal to \$300 plus \$50 for every \$12 increase in contributions made since participation began [paid] by the governing body for which the person was performing emergency service duties at the time of the disability.

(b) An increase in contributions by a governing body after the payment of a monthly annuity begins does not increase the amount of the annuity.

(c) Disability benefits are prorated for portions of months during which a person is disabled.

(d) A local board shall report to the commissioner, in a manner provided by the pension system, a determination of temporary disability not later than the 45th day after the date the disability begins.

(e) A person receiving temporary disability benefits who does not apply to the Social Security Administration for certification as permanently disabled before the second anniversary of the date of determination of temporary disability or, if the person does not participate in the social security program, to a medical board selected by the state board for alternative certification is subject to termination of disability benefit payments if the person is not certified by the Social Security Administration or the medical board within the period provided by §864.004, Government Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2006.

TRD-200601705

Kevin Deiters

Program Director

Office of the Fire Fighters' Pension Commissioner

Proposed date of adoption: May 16, 2006

For further information, please call: (512) 936-3472



CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §§310.5, 310.6, 310.8

The State Board of Trustees of the Texas Emergency Services Retirement System proposes to amend 34 Texas Administrative Code Chapter 310, §§310.5, 310.6, and 310.8, governing administration of the Texas Emergency Services Retirement System (System). The rule amendment is effective September 1, 2006.

The proposed amendment to §310.6 increases minimum pension contribution rates by \$4 per month per member in each of the years following September 1, 2006. This is the first increase in the statewide minimum pension contribution rate since the pension fund was created in 1977. The current minimum contribution rate is \$12 per member per month and this minimum rate has lost over two-thirds of its purchasing power to inflation since 1977.

The adoption of the higher contribution rates will allow the System to provide qualified firefighters and emergency services personnel with higher pension, disability, and death benefits.

The proposed amendment to §310.8 establishes the Automated Clearing House (ACH) legal framework of rules and procedures as the preferred method of electronic payment of pension contributions.

The actuarial effect of the amended rule was determined by the actuarial firm of Rudd and Wisdom, Inc. As of August 31, 2004, Rudd and Wisdom, Inc. reported that the Fund is not adequately financed on an actuarially sound basis and that the Fund had an annual contribution deficiency of \$1.2 million for the year beginning September 1, 2004. By special actuarial study of February 27, 2006, Rudd and Wisdom, Inc. estimated that the amendment would reduce the annual required contributions for a 30-year amortization of the System's unfunded actuarial accrued liability by \$282,642. This would result in just slightly more reduction in the required contributions than necessary to have an amortization period of exactly 30 years anticipating maximum state contributions for 30 years.

Kevin Deiters, Program Director, has determined that for the first five years that the amended rules are in effect that state and local contributions to the pension system will increase. Under the proposed amendment to §310.6, total local contributions in the years 2006 through 2010 will increase by \$1.8 million from \$8.2 million to \$10.0 million. Total state contributions will increase by \$585 thousand from \$2.7 million to \$3.3 million. There is no anticipated economic cost to small businesses or individuals by the adoption of the amendments.

Mr. Deiters has also determined that for each year of the first five year period the amendments are in effect the public benefit anticipated as a result of the adoption of the amendments will be to provide participating departments with improved benefits to recruit volunteer fire fighters and emergency services personnel to protect local communities.

Comments on the proposal may be submitted in writing to Lisa Ivie Miller, Commissioner, Office of the Fire Fighter Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577 no later than May 15, 2006. Comments may also be submitted electronically to rules@ffpc.state.tx.us or faxed to (512) 936-3480.

The amendments are proposed under the statutory authority of Title 8, Government Code, Subtitle H Texas Emergency Services Retirement System.

No other statutes, articles, or codes are affected by the proposed amendments.

§310.5. Local Board of Trustees.

(a) A local board annually shall elect a chair, vice chair and secretary.

(b) A meeting of a local board is subject to the Texas Open Meetings [opening meetings] law (Chapter 551, Government Code).

§310.6. Local Contributions.

(a) Except as otherwise provided by this section, each participating department shall contribute at least \$12 for each month or a portion of a month a member performs emergency services for the department. A participating department may elect to make contributions at a greater rate by notifying the commissioner of the rate. Contributions are payable for each month or portion of a month of service regardless of whether the member receives a year of qualified service. Contributions are payable as provided by §865.014, Government Code, and §310.8 of this title.

(b) The minimum contribution rate for a department that begins participation in the pension system after September 1, 2005, is \$36.

(c) The minimum monthly contribution rate for a department participating in the pension system on September 1, 2005, is subject to increase according to the following schedule:

- (1) on September 1, 2006, \$16;
- (2) on September 1, 2007, \$20;
- (3) on September 1, 2008, \$24;
- (4) on September 1, 2009, \$28;
- (5) on September 1, 2010, \$32; and
- (6) on September 1, 2011, \$36.

(d) [(e)] Contributions are payable during a period of temporary disability or when leave is taken under the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.), but are not payable when a member is performing active military duty, although the member receives credit for qualified service when performing active military duty.

(e) [(d)] Contributions required under this section are not considered compensation to the members for whom they are made.

§310.8. Billings.

(a) The commissioner shall bill governing bodies of participating departments and governing bodies of municipalities for which the commissioner is administering pensions under the Texas Local Fire Fighters Retirement Act quarterly on the last business day of November, February, May, and August.

(b) Each billing shall include, as appropriate, charges for:

- (1) monthly contributions for participating members;
- (2) prior service contributions;
- (3) the cost of, and any administrative fee for administering pensions under the Texas Local Fire Fighters Retirement Act;
- (4) late-payment interest charges; and
- (5) unpaid administrative penalties.

(c) At least 30 days before the last day of each quarter, the commissioner shall send to the chair of the local board of each participating department a pension roster report that includes the name of each person who performs emergency services for the department and is identified as a member of the pension system.

(d) The chair of the local board or the administrative head of the department shall verify the accuracy of the report, make needed changes in the roster, and return the report to the commissioner not later than the fifth day before the last day of the quarter.

(e) Payments under a billing issued under this section become due within 30 days of the invoice date. Late payments accrue interest at the current actuarially assumed rate of investment return on fund assets.

(f) In this section:

(1) The term "ACH" (Automated Clearing House) means the legal framework of rules and operational procedures adopted by financial institutions for the electronic transfer of funds.

(2) The term "ACH Credit" means an ACH transaction initiated by the governing body of a participating department for the electronic transfer of funds from the account of the governing body to the account of the pension system.

(3) The term "ACH Debit" means an ACH transaction initiated by the pension system for the electronic transfer of funds from the account of the governing body of a participating department to the account of the pension system.

(4) The term "electronic transfer of funds" means the transfer of funds, other than by check, draft or similar paper instrument, that is initiated electronically to order, instruct, or authorize a financial institution to debit or to credit an account.

(5) The term "pre-authorized direct debit" means the method available to the governing body of a participating department for electronically paying required contributions by granting a continuing authorization to the pension system to initiate an ACH Debit each quarter for the electronic transfer of funds from the designated bank account of the governing body to the account of the pension system in an amount equal to the contributions required to be paid based on the quarterly report as filed.

(6) The term "wire transfer" generally means a single transaction, initiated by the governing body of a participating department, in which funds are electronically transferred to the account of the pension system using the Federal Reserve Banking System rather than the ACH.

(g) Amounts required to be contributed to the pension system in accordance with Chapter 865 of the Texas Government Code may be made by pre-authorized direct debits (ACH Debits). ACH Credits and wire transfers may not be used to transfer funds to the pension system except as authorized under subsection (j) of this section.

(h) The governing body of a participating department may elect to use the preauthorized direct debit method of payment by filing a signed authorization agreement with the pension system in which the governing body has designated a single bank account from which all transfers will be made.

(i) The authorization agreement entered into for this purpose constitutes continuing authority for the pension system to initiate a direct debit of the governing body's designated bank account each quarter and is effective with respect to each quarterly report of the governing body, whether filed by mail or by electronic transmission.

(j) An authorization agreement remains in effect until the pension system receives either a written revocation of the agreement, or a subsequent written agreement, which automatically revokes the existing authorization. A new authorization agreement must be filed if there is any change in the designated bank account. The pension system, in its sole discretion, may terminate the authorization agreement by mailing written notice to the governing body. Thereafter, the governing body must remit all contributions by check or other monetary means approved by the commissioner. The alternative method of payment may include a fee to recover the cost of administering this subsection.

(k) Following receipt of a roster report filed under an unrevoked authorization agreement, the pension system will initiate an ACH Debit in the amount required to be contributed for that period based on the report; however the actual transfer of funds from the governing body's designated account will not occur before the due date of the report.

(l) The receipt of a quarterly roster report filed under an unrevoked authorization agreement is considered to be receipt by the pension system of the amount required to be contributed for the period based on that report if there are sufficient funds available for transfer from the governing body's designated account on the later of the due date of the report or the date the report is received. An ACH Debit that is reversed by a governing body or that fails because sufficient funds are not available for transfer constitutes nonpayment of the required

contributions with respect to that report and, thereafter, the required contributions will not be considered to have been received until the day the funds are actually transferred to the account of the pension system. A governing body failing to timely file the required information or remit the required contributions by the due date of the report is subject to a penalty for late reporting in accordance with §310.9 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 20, 2006.

TRD-200601706

Kevin Deiters

Program Director

Office of the Fire Fighters' Pension Commissioner

Proposed date of adoption: May 16, 2006

For further information, please call: (512) 936-3472



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter A, §4.1, concerning Regulations Governing Hazardous Materials.

Amendments to §4.1 are necessary to ensure that the Federal Hazardous Material Regulations, incorporated by reference in the section, reflect all amendments and interpretations issued through February 1, 2006.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amendments are in effect the public benefit anticipated as a result of enforcing the amended rule will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part

of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

Texas Government Code, §411.018 and Texas Transportation Code, §644.051 are affected by this proposal.

§4.1. Transportation of Hazardous Materials.

(a) The director of the Texas Department of Public Safety incorporates, by reference, the Federal Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 107 (Subpart G), 171 - 173, 177, 178, and 180, including all interpretations thereto, for commercial vehicles operated in intrastate, interstate, or foreign commerce, as amended through February [October] 1, 2006 [2005]. All other references in this section to the Code of Federal Regulations also refer to amendments and interpretations issued through February [October] 1, 2006 [2005].

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601598

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 424-2135



SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §§4.11 - 4.15, 4.21

The Texas Department of Public Safety proposes amendments to Chapter 4, Subchapter B, §§4.11 - 4.15 and §4.21, concerning Regulations Governing Transportation Safety.

The amendment to §4.11 updates the rule so that it reflects February 1, 2006 in subsection (a). The amendment is necessary to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in the section, reflect all amendments and interpretations issued through that particular date.

An amendment to §4.12 is necessary to correct an inaccuracy made in citing the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59) within this section. A second amendment is being made to §4.12 to remove outdated language.

An amendment to §4.13 are necessary in order to clarify that Level I inspections conducted on vehicles containing non-bulk quantities of hazardous materials, cargo tank vehicles, vehicles containing other bulk packaging, and passengers vehicles also count towards the general 32 Level I inspection requirement per calendar year.

An amendment to §4.14 is necessary to clarify how the department will determine if a municipality meets the population threshold amounts listed in Texas Transportation Code, §644.101. Additional amendments to §4.14 are necessary to clarify that paper copies of roadside inspection reports must also be sent to the department for timely quality control of uploaded data and that

certified municipalities and counties can be decertified for reporting data to the department in an untimely manner.

An amendment to §4.15 is necessary to clarify when a final unsatisfactory safety rating and order to cease all intrastate transportation becomes effective when a motor carrier evades service of these documents. An additional amendment to §4.15 is necessary in order to specify procedures for issuing an Order to Cease all or part of a motor carrier's intrastate operations when they constitute an Imminent Hazard.

An amendment to §4.21 is necessary to clarify that a dilute positive drug test is considered a valid positive test for reporting purposes. However, a dilute negative drug test is not considered a valid positive test for reporting purposes.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also determined that for each year of the first five-year period the amendments in effect the public benefit anticipated as a result of enforcing the amended rules will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state. There is no adverse economic impact anticipated for individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mark Rogers, Major, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2116.

The amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.11. General Applicability and Definitions.

(a) General. The director of the Texas Department of Public Safety incorporates, by reference, the Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations, Parts 40, 380, 382, 385, 386, 387, 390 - 393, and 395 - 397 including all interpretations thereto, as amended through February [October] 1, 2006 [2005]. All other references in this subchapter to the Code of Federal Regulations also refer to amendments and interpretations issued through February [October] 1, 2006 [2005]. The rules adopted herein are to ensure that:

(1) - (4) (No change.)

(b) - (c) (No change.)

§4.12. Exemptions and Exceptions.

(a) (No change.)

(b) Exceptions. Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Transportation Code, §644.053, are as follows:

(1) - (6) (No change.)

{(7) Texas Transportation Code, Chapter 642, concerning identifying markings on commercial motor vehicles shall take prece-

dence over Title 49, Code of Federal Regulations, Part 390.21, for vehicles operated in intrastate commerce.}]

(7) [(8)] Title 49, Code of Federal Regulations, Part 390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the following exceptions:

(A) Title 49, Code of Federal Regulations, Part 390.23(a)(2) is not applicable to intrastate motor carriers making emergency residential deliveries of heating fuels or responding to a pipeline emergency, provided the carrier:

(i) documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months. An emergency under this paragraph is one that if left unattended would result in immediate serious bodily harm, death or substantial property damage but does not include routine requests to re-fill empty propane gas tanks.

(B) The requirements of Title 49, Code of Federal Regulations, Parts 390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code, Chapter 644; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has had at least 34 consecutive hours off duty when the driver has been on duty for more than 70 hours in seven consecutive days.

(8) [(9)] Title 49, Code of Federal Regulations, Part 380, (Subparts A-D), is not adopted for intrastate motor carriers and drivers. Title 49, Code of Federal Regulations, Part 380 (Subpart E) is adopted for intrastate motor carriers and drivers. Intrastate motor carriers and drivers must complete the requirements of Title 49, Code of Federal Regulations, Part 380.500 on or before July 31, 2005.

(9) [(10)] In accordance with §4132 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETA-LU) (Pub. L. 109-59 [10-59]), the hours of service regulations in this subchapter are not applicable to utility service vehicles that operate in either interstate or intrastate commerce. Utility service vehicles are those vehicles operated by public utilities, as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, the Texas Water Code, Title 49, Code of Federal Regulations, Part 395.2, or other applicable regulations, and charged with the responsibility for maintaining essential services to the public to protect health and safety.

§4.13. Authority to Enforce, Training and Certificate Requirements.

(a) - (b) (No change.)

(c) Maintaining Certification.

(1) To maintain certification to conduct inspections and enforce the federal safety regulations, a peace officer must:

(A) - (B) (No change.)

(C) If the officer is certified to perform hazardous materials inspections, at least eight inspections (Levels I, II or V) shall be conducted on vehicles containing non-bulk quantities of hazardous materials per calendar year. Level I inspections on vehicles containing non-bulk quantities of hazardous materials may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(D) If the officer is certified to perform cargo tank inspections, at least eight inspections (Levels I, II or V) shall be con-

ducted on vehicles transporting hazardous materials in cargo tanks per calendar year. Level I inspections on cargo tank vehicles transporting hazardous materials may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(E) If the officer is certified to perform other bulk packaging inspections, at least eight of the inspections (Levels I, II or V) shall be conducted on vehicles transporting hazardous materials in other bulk packaging per calendar year. Level I inspections on vehicles containing other bulk packaging may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(F) If the officer is certified to perform passenger vehicle inspections, at least eight of the inspections (Levels I or V) shall be conducted on passenger vehicles such as motor coaches/buses per calendar year. Level I inspections on passenger vehicles may also be used to satisfy the 32 Level I inspections required by subparagraph (B) of this paragraph.

(2) - (4) (No change.)

§4.14. Municipal and County Certification Requirements.

(a) Certain peace officers from an authorized municipality or county may be trained and certified to enforce the federal safety regulations provided the municipality or county:

(1) - (5) (No change.)

(6) provides all roadside inspection data to the department through electronic systems that are compatible with the department's system within 15 business days of the inspection, and forwards paper copies immediately thereafter; and

(7) (No change.)

(b) Substantial non compliance with the provisions of the Memorandum of Understanding or the training, officer certification, or data-sharing requirements by the municipality or county, including timeliness of reporting data, will constitute grounds to decertify the municipality's or county's authority to enforce the federal safety regulations.

(c) - (d) (No change.)

(e) In determining whether a municipality meets the population threshold requirements of Texas Transportation Code, §644.101, the department will use either:

(1) the most recent federal decennial census, or

(2) a resolution or proclamation issued under the authority of the governing body of the municipality that attests and certifies that the population of the municipality, including the authorized extraterritorial jurisdiction of the municipality, meets or exceeds the population threshold amounts listed in Texas Transportation Code, §644.101.

§4.15. Safety Audit Program.

(a) The rules in this subsection, as authorized by Texas Transportation Code, §644.155, establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial actions when necessary, assess administrative penalties when required, and prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a commercial motor vehicle. The department will use the Compliance Review Audit to determine the safety fitness of motor carriers and to assign safety ratings. The safety fitness determination will be assessed on intrastate motor carriers and the intrastate operations of interstate motor carriers based in Texas.

(1) - (3) (No change.)

(4) Safety Fitness Rating.

(A) - (C) (No change.)

(D) The department will provide written notification to the motor carrier of the assigned safety rating within 30 business days of the close out date of the compliance review.

(i) - (iii) (No change.)

(iv) A final unsatisfactory safety rating and order to cease all intrastate transportation, described in clause (iii) of this subparagraph, will become effective on the date specified in the notice of proposed safety rating unless extended by the department, in writing, under subparagraph (G)(v) or (vi) of this paragraph. The department will make and document reasonable efforts to provide a copy of the written final unsatisfactory safety rating and order to cease intrastate transportation to the carrier. However, if the notice of proposed safety rating was received by the motor carrier and adequately describes the effective date and consequences of failure to improve the motor carrier's safety rating, failure of the department to serve the final unsatisfactory safety rating and order to cease intrastate transportation will not delay its effective date.

(E) - (I) (No change.)

(b) Imminent Hazard.

(1) Regardless of whether an Unsatisfactory Safety Rating has become final under subsection (a)(4)(C) of this section, if the Manager of the Motor Carrier Bureau, or his designee, determines that a motor carrier's operations constitute an Imminent Hazard, the Manager or his designee shall issue an Order to Cease all or part of the motor carrier's commercial motor vehicle operations.

(2) In making any such order, no restrictions shall be imposed on any employee or employer beyond that required to abate the hazard.

(3) Opportunity for review of any such order shall be in the manner described in §4.18 of this title (relating to Intrastate Operating Authority Out-of-Service Review).

(c) [(b)] Release of Safety Rating Information.

(1) The safety rating assigned to a motor carrier will be made available to the public upon request.

(2) Requests should be addressed to the Texas Department of Public Safety, Motor Carrier Bureau, Box 4087, Austin, Texas 78773-0521. All requests for disclosure of safety rating must be made in writing and will be processed under the Texas Public Information Act.

§4.21. Reports of Valid Positive Results on Alcohol and Drug Tests.

(a) Reporting Requirement. An employer required under the federal safety regulations to conduct alcohol and controlled substance testing of employees shall report to the department a valid positive result on an alcohol or controlled substance test performed as part of the carrier's alcohol and drug testing program or consortium, as defined by Title 49, Code of Federal Regulations, Part 382, on an employee of the carrier who holds a commercial driver license issued under Texas Transportation Code, Chapter 522.

(1) - (4) (No change.)

(5) A dilute positive drug test under Title 49, Code of Federal Regulations, Part 40.197(a) is a valid positive result. A dilute negative drug test is not a valid positive test. A positive drug test from a recollection under Title 49, Code of Federal Regulations, Part 40.197(b) is a valid positive test.

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601597

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: April 30, 2006

For further information, please call: (512) 424-2135

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

34 TAC §31.14

The Teacher Retirement System of Texas withdraws the emergency amendment to §31.14 which appeared in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8374).

Filed with the Office of the Secretary of State on March 17, 2006.

TRD-200601688

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Effective date: April 4, 2006

For further information, please call: (512) 542-6438



TITLE 37. PUBLIC SAFETY AND CORREC- TIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.11

The Texas Commission on Law Enforcement Officer Standards and Education withdraws the proposed amendment to §217.11 which appeared in the January 6, 2006, issue of the *Texas Register* (31 TexReg 93).

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601626

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: March 14, 2006

For further information, please call: (512) 936-7717



CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.13

The Texas Commission on Law Enforcement Officer Standards and Education withdraws the proposed amendment to §221.13 which appeared in the January 6, 2006, issue of the *Texas Register* (31 TexReg 98).

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601632

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: March 14, 2006

For further information, please call: (512) 936-7717



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS PLANTS

SUBCHAPTER P. DIAPREPES ROOT WEEVIL QUARANTINE

4 TAC §19.161

The Texas Department of Agriculture (the department) adopts amendments to §19.161, concerning a quarantine for the Diaprepes root weevil, *Diaprepes abbreviatus* (L), with changes to the proposal as published in the January 27, 2006, issue of the *Texas Register* (31 TexReg 449). The amendments are adopted to prevent the spread of the Diaprepes root weevil into other citrus and nursery growing areas of Texas and to facilitate its eradication. Due to the detection of Diaprepes root weevils in 2001 in an orange grove located 0.2 miles West of the intersection of Hobbs Drive and North 2nd Street in McAllen, Texas, the department quarantined the grove and the area within 300-yards surrounding the grove to facilitate eradication of this pest. As a result of detections of the pest outside of the quarantined area in August - December 2 of 2005, the department adopted on an emergency basis the amendments to the Diaprepes root weevil quarantine that are the subject of this filing. The emergency filing was published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8371). The department believes that the expansion of the quarantined area, enhances chances for a successful eradication since it prevents artificial spread of the quarantined pest into other citrus and nursery growing areas of Texas. The amendments are adopted with changes made for purposes of clarification in paragraph (1)(A), where a hyphen was deleted and in paragraph (1)(C), where language was added to clarify that the map may be obtained at the department's Valley Regional Office.

Amended §19.161 expands the quarantined area in correspondence with the detection of the Diaprepes root weevils outside the current quarantined area.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code, §71.001, which authorizes the department to establish quarantines against out-of-state diseases and pests; §71.002, which authorizes the department to establish quarantines against in-state diseases and pests; and §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide

for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances.

§19.161. Quarantined Areas.

The quarantined areas are:

(1) Within Texas:

(A) the citrus grove located in Hidalgo County, McAllen, Texas, 0.20 miles West of the intersection of Hobbs Drive and North 2nd Street and the area within approximately 300 yards surrounding the grove in all directions; the property located at 9601 N. 10th Street, Unit 1-11, Hidalgo County, McAllen, Texas and the surrounding area within approximately 300 yards in all directions, including the citrus grove, comprised of approximately 20 acres, located south of the Timberhill Mobile Park; and the property located at 3539 Plaza del Lagos, Hidalgo County, Edinburg, Texas and the surrounding area within approximately 300 yards in all directions; and

(B) any other area where the quarantined pest is detected.

(C) The map of the quarantined area may be obtained from the department's Valley Regional Office, 900-B, East Expressway, San Juan, Texas 78589.

(2) Outside Texas:

(A) State of Florida: Counties of Broward, Dade, DeSoto, Collier, Glades, Hendry, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Marion, Martin, Orange, Osceola, Palm Beach, Pasco, Polk, Seminole, St. Lucie, Sumter, Volusia;

(B) the Commonwealth of Puerto Rico;

(C) the islands of the West Indies; and

(D) any other area where the quarantined pest is detected..

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601651

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: April 4, 2006

Proposal publication date: January 27, 2006

For further information, please call: (512) 463-4075



TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.2

The Texas State Securities Board adopts an amendment to §115.2, concerning securities dealers and agents, without changes to the proposed text as published in the January 20, 2006, issue of the *Texas Register* (31 TexReg 364).

The amendment eliminates the requirement for filing an assumed name certificate with an application for registration as a securities dealer.

An unnecessary filing is eliminated, resulting in a streamlined registration process for securities dealers.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-13 and 581-18.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 13, 2006.

TRD-200601590

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Effective date: April 2, 2006

Proposal publication date: January 20, 2006

For further information, please call: (512) 305-8303



CHAPTER 116. INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

7 TAC §116.2

The Texas State Securities Board adopts an amendment to §116.2, concerning investment advisers and investment adviser representatives, without changes to the proposed text as published in the January 20, 2006, issue of the *Texas Register* (31 TexReg 365)

The amendment eliminates the requirement for filing an assumed name certificate with an application for registration as an investment adviser.

An unnecessary filing is eliminated, resulting in a streamlined registration process for investment advisers.

No comments were received regarding adoption of the amendment.

Statutory authority: Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Cross-reference to Statute: Texas Civil Statutes, Articles 581-13 and 581-18.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 13, 2006.

TRD-200601589

Denise Voigt Crawford

Securities Commissioner

State Securities Board

Effective date: April 2, 2006

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For further information, please call: (512) 305-8303



TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.80

The Railroad Commission of Texas adopts amendments to §3.80, relating to Commission Forms, Applications and Filing Requirements, with one change to the version published in the January 27, 2006, issue of the *Texas Register* (31 TexReg 450). The amendments add three new Railroad Commission Oil and Gas Division Forms to Table 1; the adopted change adds the effective date of "4/06" to the table on the rows for the three new OW forms. The new forms, which were also published in the January 27, 2006, issue of the *Texas Register* at 31 TexReg 597, are Form OW-1, entitled "Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Wells"; Form OW-2, entitled "Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Wells"; and Form OW-3, entitled "Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well." The Commission also deletes from Table 1 the entries for Forms P-1 and P-2, Producer's Monthly Report of Oil Wells and Producer's Monthly Report of Gas Wells, respectively.

The Commission has designed the new forms to meet the requirements established by those sections of House Bill (HB) 2161, enacted by the 79th Texas Legislature (Regular Session, 2005), relating to the Orphan Well Reduction Program and plugging of orphaned wells by surface estate owners. HB 2161, among other things, added to Chapter 89 of the Texas Natural Resources Code a new §89.047, relating to the Orphaned Well Reduction Program. This new section includes procedures, requirements, and incentives for a person to assume operatorship

and regulatory responsibility for orphaned oil or gas wells. The new statutory provision requires that the Commission establish a program to allow approval of applications for authorization that would allow an operator to perform an inspection of a well site for consideration of assuming operatorship of an orphan well, to provide for payments from the state's Oil-Field Cleanup Fund (OFCUF) to "adopters" of orphaned wells, and to provide for the certification of a well as "orphan" for the purpose of a severance tax exemption and exemption from Oil-Field Cleanup Regulatory fees on production from "adopted" orphaned wells. This program became effective on January 1, 2006.

HB 2161 also added to Chapter 89 of the Texas Natural Resources Code new §89.048, which authorizes the Commission to reimburse from the Oil-Field Cleanup Fund a portion of costs incurred by surface estate owners who plug orphaned wells on their property. This new section also became effective on January 1, 2006.

New §89.048 of the Texas Natural Resources Code defines an "orphaned well" as a well for which the Commission has issued a permit, for which production of oil or gas or another activity under Commission jurisdiction has not been reported to the Commission for the preceding 12 months, and whose operator's Commission-approved P-5 Organizational Report has lapsed.

The Commission adopts new Form OW-1, Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Wells, which is designed to ensure that the eligibility and other requirements of Texas Natural Resources Code, §89.047(b), (c), (d), and (e) are met. A person considering assumption of operatorship and regulatory responsibility for orphaned wells would file Form OW-1 and any required attachments in order to nominate the wells and apply for authority to conduct a surface inspection to determine whether he/she wishes to be designated as the operator of the wells. Form OW-1 requires that the applicant and the wells proposed for nomination meet the eligibility and other requirements of §89.047. If the wells have not been nominated already and the operator applying for well nomination meets all eligibility requirements, the Commission will accept the nomination and issue confirmation of authority to conduct a surface inspection of the nominated wells. The authority would expire 30 calendar days from the date of Commission approval. Statutory conditions of the authority include compliance with certain notice requirements and limitations of this authority. At least three days before the date of the surface inspection, the applicant must deliver written notice to the owner of record of the surface estate and any occupant of the tract on which the well is located.

The Commission also requests that such notice be given to the appropriate Commission District Office. As required by Texas Natural Resources Code, §89.047(d), Form OW-1 states that the notice must include a copy of Commission-approved confirmation of authority to conduct a surface inspection; identify the orphaned wells; state the name, address, and telephone number of the operator; state the date the person intends to conduct the surface inspection; state the name of at least one representative of the person who will participate in the surface inspection; and state that the person intends to inspect the orphaned well in accordance with this section for the purpose of assessing the current status and viability of the well. These requirements will be satisfied by providing a copy of the completed and approved Form OW-1.

Form OW-1 also advises of the statutory limits placed by Texas Natural Resources Code, §89.047(e), on the authority to conduct a surface inspection. In conducting a surface inspection of the

orphaned wells, the person may visually inspect the wells and all related equipment, tanks, and other facilities and may conduct noninvasive testing such as using a gauge to determine the pressure present at the wellhead but may not produce oil or gas from the wells, reenter the wells, pull tubing from or perform any other type of downhole work on the wells, conduct a salvage operation on the wells, or remove any tangible item from the well site or lease.

The Commission includes on Form OW-1 a notice to the applicant that issuance of the Confirmation to Conduct a Surface Inspection of Orphaned Wells does not guarantee that the Commission will designate the applicant as the operator of the referenced wells nor will it prevent transfer of the wells to an operator who has a good faith claim. The Commission must process any request for lease or well transfer (Form P-4) as those requests are received.

If after 30 days from the date of Commission approval of the authority to conduct a surface inspection or if after conducting the surface inspection the operator does not wish to be designated as the operator of the wells, the wells again would become eligible for nomination by another operator.

If an operator wishes to be designated as the operator of orphaned oil or gas wells under the Orphaned Well Reduction Program B whether or not the operator wishes to conduct a surface inspection of the orphaned wells B the operator must meet certain eligibility requirements and submit certain information and forms to the Commission. In order to be designated as the operator of orphaned wells under the Orphaned Well Reduction Program, the operator must be an operator in good standing and must have sufficient financial security in accordance with §3.78, relating to Fees and Financial Security Requirements, to cover the well or wells for which he wishes to be designated as operator. An operator in good standing is an operator who has a Commission-approved organization report; is the designated operator of at least one well within the Commission's jurisdiction; has filed with the Commission under Texas Natural Resources Code, §91.104, a bond, letter of credit, or cash deposit in an amount sufficient to qualify to operate one or more wells; and is not the subject of a Commission or court order regarding a violation of a Commission rule with which the operator has not complied or a complaint that has been docketed by the Commission alleging a violation of a Commission rule. In addition, if the well is subject to a Commission Final Order requiring plugging, the Commission must first conduct a hearing and enter a superceding order before the operator can be designated as the operator of the well.

If the operator meets all of the eligibility requirements, the operator may apply to the Commission for a Certificate of Designation as the Operator of Orphaned Oil or Gas Wells. The Commission adopts new Form OW-2, Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Wells, for this purpose. Form OW-2 must be accompanied by a completed and signed Form P-4, Producer's Transportation Authority and Certificate of Compliance, in accordance with §3.58, relating to Oil, Gas, or Geothermal Resource Operator's Reports; if necessary, a completed and signed Form P-6, Request for Permission to Consolidate/Subdivide Leases, if the operator is not requesting designation as the operator of all wells on a lease; a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate accessed by the well, such as evidence of a current oil and gas lease or a recorded deed conveying a fee interest in the mineral estate; and a non-re-

fundable fee in the amount of \$250 for each well for which the operator wishes to be designated as the operator.

If all requirements are met, the Commission will issue the Certificate of Designation as Operator of an Orphaned Well, in accordance with Texas Natural Resources Code, §89.047, by approving the Form OW-2.

An operator adopting orphaned wells from January 1, 2006, to December 31, 2007, may be eligible to receive certain benefits, such as a payment from the Oil-Field Cleanup Fund and/or an exemption from severance taxes (Tax Code, §202.060) and Oil-Field Cleanup Regulatory fees (Texas Natural Resources Code, §81.116 and §81.117) on future oil or gas production from the wells.

An operator who is designated as the operator of an orphaned oil or gas well (an operator who has received a Commission-approved Certificate of Designation as Operator of an Orphaned Well, in accordance with Texas Natural Resources Code, §89.047) may be entitled to a severance tax exemption. HB 2161 amended Chapter 202 of the Tax Code to provide a severance tax exemption from oil or gas produced from a reactivated orphaned well under the Orphaned Well Reduction Program.

The person responsible for paying the tax must apply to the Comptroller of Public Accounts (Comptroller). The statutes require that an application for a severance tax exemption include a copy of the certificate of designation as the operator of an orphaned well issued by the Commission and require that the Comptroller approve the application if the person demonstrates that the hydrocarbon production is eligible. The Comptroller may require a person applying for the tax exemption to provide any relevant information necessary and may establish procedures to comply with the new law. The exemption takes effect on the first day of the month following the month in which the Comptroller approves the application. Because the exemption is non-transferable, if the person to whom this certificate is issued ceases to be the operator of the well as shown by Commission records, the Commission will notify the Comptroller and the exemption will expire on the date the Comptroller receives the notice.

In addition, an operator who is designated as the operator of an orphaned oil or gas well (an operator who has received a Commission-approved Certificate of Designation as Operator of an Orphaned Well, in accordance with Texas Natural Resources Code, §89.047) may be entitled to a payment of \$0.50 per foot of well depth if the operator plugs the well or reactivates the well. If the operator and the well meet the eligibility requirements, the operator may apply for payment. A well is considered to be in continuous active operation for purposes of payment if: (1) the well is a producing well (a well classified by the Commission as an oil or gas well in accordance with Commission rules) and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission; or (2) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission. The statutes define a "service well" as a well for which the Commission has issued a permit that is not a producing well, including an injection, disposal, or brine mining well.

A designated operator wishing to apply for the payment authorized under Texas Natural Resources Code, §89.047, will file with the Commission's Field Operations Section a completed and signed Form OW-3, Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well, and any required attachments, including a copy of the Commission-approved certificate of designation as the operator of an orphaned well; and, if the well was plugged, Form W-3 (Plugging Record); if the well was produced, signed documentation proving that the well produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months; or if the well was used as a service well, a copy of the injection/disposal/other well permit, a copy of the completion report, and signed documentation proving that the well was used as an injection or disposal or other service well for a period of at least three consecutive months.

In accordance with Texas Natural Resources Code, §89.047, the operator must be designated as the operator of the orphaned well on or after January 1, 2006, and on or before December 31, 2007, in order to be entitled to receive the payment under the Orphan Well Reduction Program. In addition, the statutes require that the Commission make payments to operators in the same order the Commission determines the operators to be entitled to the payments. Further, the aggregate amount of such payments in a state Fiscal Year (September 1 through August 31) may not exceed \$500,000. And, as mentioned before, the payment is nontransferable; therefore, the Commission may make the payment only to the operator who was designated as the operator of the orphaned well. Finally, an operator may not receive more than one payment under that subsection for the same well or cumulative payments in an amount that exceeds the amount of the bond, letter of credit, or cash deposit the operator has filed with the Commission under Texas Natural Resources Code, §91.104.

HB 2161 also provides for civil penalties for filing a false application for the purpose of receiving a tax exemption and provides the Attorney General with the authority to recover a penalty.

As noted, HB 2161 also added to Chapter 89 of the Texas Natural Resources Code new §89.048, which authorizes reimbursement of a portion of the costs incurred by a surface estate owner for plugging or orphaned wells. A surface estate owner will complete and file new Form OW-3, Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well, when applying for such reimbursement.

New Texas Natural Resources Code, §89.048, authorizes the Commission to reimburse the owner for the cost of plugging an orphaned well on the surface owner's property in an amount not to exceed 50 percent of the lesser of actual costs or the average cost incurred by Commission in the preceding 24 months in plugging similar wells. The new section authorizes the Commission to make such payments from the Oil-Field Cleanup Fund (OFCUF). Under Texas Natural Resources Code, §89.048, the surface estate owner must contract with a Commission-approved well plugger to plug an orphaned well on his/her property. The well plugger under contract must mail to the operator of record at least 30 days before plugging operations a notice of its intent to plug, assume responsibility for the physical operation and control of the well (file a one-signature Form P-4, Producer's Transportation Authority and Certificate of Compliance), file financial security to cover the well, and plug the well in compliance with Commission rules. Upon successful plugging of the well by the well plugger, the surface estate owner would submit to the Commission a completed and signed Form OW-3 and documentation of the plugging costs. The Commission will

then reimburse the surface estate owner from the OFCUF for the lesser of 50 percent of the documented well-plugging costs or the average Commission costs for plugging a similar well in the same general area within the preceding 24 months.

The Commission also deletes from Table 1 the entries for Forms P-1 and P-2, Producer's Monthly Report of Oil Wells and Producer's Monthly Report of Gas Wells, respectively. These forms were replaced by Form PR, Monthly Production Report, on February 11, 2005.

The Commission received no comments on the proposed amendments or new forms.

The Commission adopts the amendments to §3.80 pursuant to Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under Commission jurisdiction; and Texas Natural Resources Code, §89.047 and §89.048, which establish the Orphaned Well Reduction Program, and which, with Texas Natural Resources Code, §91.112, authorize the Commission to make payments to surface estate owners who plug orphaned oil or gas wells on their property.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 89.047, 89.048, and 91.112.

Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, 89.047, 89.048, and 91.112.

Issued in Austin, Texas, on March 14, 2006.

§3.80. Commission Oil and Gas Forms, Applications, and Filing Requirements.

(a) Forms. Forms required to be filed at the Commission shall be those prescribed by the Commission as listed in Table 1 of this subsection. A complete set of all Commission forms listed on Table 1 required to be filed at the Commission shall be kept by the Commission secretary and posted on the Commission's web site. Notice of any new or amended forms shall be issued by the Commission. For any required or discretionary filing, an organization may either file the prescribed form on paper or use any electronic filing process in accordance with subsections (e) or (f) of this section, as applicable. The Commission may at its discretion accept an earlier version of a prescribed form, provided that it contains all required information and meets the requirements of subsection (e)(3) of this section.

Figure: 16 TAC §3.80(a)

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Railroad Commission of Texas.

(2) Electronic filing process--An electronic transmission to the Commission in a prescribed form and/or format authorized by the Commission and completed in accordance with Commission instructions.

(3) Form--A printed or typed paper document or electronic submission, including any necessary instructions, with blank spaces for insertion of required or requested specific information.

(4) Organization--Any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the Commission.

(5) Position of ownership or control--A person holds a position of ownership or control in an organization if the person is:

(A) an officer or director of the organization;

(B) a general partner of the organization;

(C) the owner of an organization which is a sole proprietorship;

(D) the owner of more than a 25 percent ownership interest in the organization; or

(E) the designated trustee of the organization.

(6) Violation--Non-compliance with a statute, Commission rule, order, license, permit, or certificate relating to safety or the prevention or control of pollution.

(c) Organization eligibility. The Commission may not accept an organization report or an application for a permit, or approve a certificate of compliance if:

(1) the organization that submitted the report, application, or certificate violated a statute or Commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution; or

(2) any person who holds a position of ownership or control in the organization has, within the seven years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization, and during that period of ownership or control the other organization violated a statute or Commission rule, order, license, permit, or certificate that relates to safety or the prevention or control of pollution.

(d) Violations. An organization has committed a violation if there is either a Commission order against an organization finding that the organization has committed a violation and all appeals have been exhausted or an agreed order entered into by the Commission and an organization relating to an alleged violation, and:

(1) the conditions that constituted the violation or alleged violation have not been corrected;

(2) all administrative, civil and criminal penalties, if any, relating to the violation or agreed settlement relating to an alleged violation have not been paid; or

(3) all reimbursements of costs and expenses, if any, assessed by the Commission relating to the violation or to the alleged violation have not been collected.

(e) Authorization and standards for electronic filing.

(1) An organization may file electronically any form listed on Table 1 for which the Commission has provided an electronic version, provided that the organization pays all required filing fees and complies with all requirements, including but not limited to security procedures, for electronic filing.

(2) The Commission deems an organization that files electronically or on whose behalf is filed electronically any form, as of the time of filing, to have knowledge of and to be responsible for the information filed on the form, pursuant to the statutory requirements, restrictions, and standards found in and pertaining to:

(A) Texas Natural Resources Code, Title 3 (oil and gas well drilling, production, and plugging);

(B) Texas Natural Resources Code, Title 5 (geothermal resources);

(C) Texas Natural Resources Code, Title 11 (hazardous liquids storage);

(D) Texas Utilities Code, Chapter 121, Subchapter I (sour gas pipeline facilities);

(E) Texas Water Code, §26.131 (discharge permits);

(F) Texas Water Code, Chapter 27 (class II injection and disposal wells and class III brine mining wells);

(G) Texas Water Code, Chapter 29 (oil and gas waste haulers);

(H) Texas Health and Safety Code, §401.415 (oil and gas naturally occurring radioactive material (NORM) waste); and

(I) Texas Administrative Code, Title 16, Chapter 3 (Oil and Gas Division) and Chapter 4 (Environmental Protection).

(3) All forms that an organization submits or that are submitted on behalf of an organization shall be transmitted in the manner prescribed by the Commission that is compatible with its software, equipment, and facilities.

(4) The Commission may provide notice electronically to an organization of, and may provide an organization the ability to confirm electronically, the Commission's receipt of a form submitted electronically by or on behalf of that organization.

(5) The Commission deems that the signature of an organization's authorized representative appears on each form submitted electronically by or on behalf of the organization, as if this signature actually appears, as of the time the form is submitted electronically to the Commission.

(6) The Commission holds each organization responsible, under the penalties prescribed in Texas Natural Resources Code, §91.143, for all forms, information, or data that an organization files or that are filed on its behalf. The Commission charges each organization with the obligation to review and correct, if necessary, all forms or data that an organization files or that are filed on its behalf.

(f) Other electronic transmissions. The Commission may at its discretion accept other documents or data electronically transmitted.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601603

Mary Ross McDonald

Managing Director, Office of General Counsel

Railroad Commission of Texas

Effective date: April 3, 2006

Proposal publication date: January 27, 2006

For further information, please call: (512) 475-1295



CHAPTER 7. GAS SERVICES DIVISION

SUBCHAPTER I. NATURAL GAS PIPELINE COMPETITION

16 TAC §7.7201

The Railroad Commission of Texas adopts new §7.7201, relating to the Natural Gas Pipeline Competition Study Advisory Committee, in new Subchapter I entitled "Natural Gas Pipeline Compe-

tion," without changes to the version published in the February 10, 2006, issue of the *Texas Register* (31 TexReg 789). Pursuant to the requirements of Texas Government Code, §§2110.001 - 2110.008, the new section creates the Natural Gas Pipeline Competition Study Advisory Committee of the Commission and establishes its duration; sets forth the purpose and tasks of the committee; prescribes the nomination and appointment process; and sets forth the mechanisms by which the committee reports to the Commission.

New §7.7201 creates the Natural Gas Pipeline Competition Study Advisory Committee, effective April 3, 2006, and abolishes it on December 31, 2006, unless the Commission amends the rule to change that date. The purpose of the committee is to give the Commission the benefit of the members' collective business, technical, and operating expertise and experience to help the Commission review competition in the Texas intrastate natural gas pipeline industry, assess the effect of current statutes and rules on competition, and develop recommendations for changes to statutes or rules that may be necessary. The Commission will not reimburse members for travel or other expenses related to service on the committee.

The Commission received one comment on the proposed new rule. R.J. Covington Consulting filed comments on behalf of Texas Independent Energy. Texas Independent Energy, LP (a Delaware limited partnership) and subsidiaries (TIE) is an indirect wholly owned subsidiary of Public Service Enterprise Group, Incorporated. The Partnership was formed in March 1999, and holds a 100 percent ownership interest in Guadalupe Power Partners, LP, and Odessa-Ector Power Partners, L.P., which develop, construct and operate merchant electric power plants in Texas.

TIE participated in the RRC's recent workshops organized to gather firsthand information from market participants on abusive discriminatory practices that impact fair competition on the Texas intrastate pipeline system. TIE understands that the advisory committee will incorporate the information gathered at these workshops to review competition in the Texas intrastate pipeline industry, assess the effect of current statutes and rules on such competition, and develop recommendations for changes to statutes or rules that may be necessary to assure fair competition.

TIE commented that it has experienced anti-competitive practices by Texas intrastate pipelines, and has discussed some of these issues at the RRC's workshops. As an electric generator, TIE and others like it face unique challenges in meeting the variable demand for electricity at a reasonable cost for consumers in Texas. Problems TIE identified relate to inadequate access to information, insufficient recourse in contract disputes, and ineffective oversight of pipeline practices all affect the competitive operation of its power plants.

TIE's comment therefore draws attention to §7.7201(d) of the proposed rule regarding nominations for committee membership. TIE recognizes the authority of the Commission to nominate and appoint members to the committee that the individual Commissioners believe will best advise them on matters related to pipeline competition. However, TIE urges the Commission to consider committee members that can effectively articulate the important and unique issues faced by shippers such as power generators. While natural gas producers and pipeline operators were widely represented at the RRC's workshops, it was clear that the competitive issues impacting power generators as consumers of natural gas are not necessarily

represented by either of these other market participants. In fact, TIE found itself aligned alternatively with producers or pipelines on different issues. In TIE's view, this reinforces the need for the committee membership to reflect the broader perspective of other affected parties and, specifically, power generators.

The Commission appreciates TIE's support of the creation of the advisory committee, TIE's participation in the workshops, and its assistance in providing information about the Texas intrastate natural gas pipeline industry. Because TIE's comments do not address the wording or structure of the rule, the Commission makes no changes to new §7.7201 based on TIE's comments. Nevertheless, TIE's comments will be considered as the Commission appoints the members of the advisory committee created pursuant to new §7.7201.

The Commission adopts the new section under Texas Natural Resources Code, §81.052, which gives the Commission the authority to adopt all rules necessary for governing and regulating persons and their operations under the jurisdiction of the Commission; Article VI, Railroad Commission, Section 16, Appropriations Act, 2006-2007 Biennium, 79th Legislature, Regular Session, 2005, which requires the Commission to conduct a study that determines the extent to which competition exists in the Texas natural gas pipeline industry; Texas Government Code, §2001.031, which authorizes the Commission to appoint advisory committees to advise the Commission about contemplated rulemaking; and Texas Government Code, §§2110.001 - 2110.008, which mandate specific requirements for state agency advisory committees.

Article VI, Railroad Commission, Section 16, Appropriations Act, 2006-2007 Biennium, 79th Legislature, Regular Session, 2005, Texas Government Code, §2001.031, and Texas Government Code, §§2110.001 - 2110.008, are affected by the new section.

Statutory authority: Texas Natural Resources Code, §81.052; Article VI, Railroad Commission, Section 16, Appropriations Act, 2006-2007 Biennium, 79th Legislature, Regular Session, 2005; and Texas Government Code, §2001.031, and §§2110.001 - 2110.008.

Cross-reference to statutes: Texas Natural Resources Code, §81.052; Article VI, Railroad Commission, Section 16, Appropriations Act, 2006-2007 Biennium, 79th Legislature, Regular Session, 2005; and Texas Government Code, §2001.031, and §§2110.001 - 2110.008.

Issued in Austin, Texas, on March 14, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601602

Mary Ross McDonald

Managing Director, Office of General Counsel

Railroad Commission of Texas

Effective date: April 3, 2006

Proposal publication date: February 10, 2006

For further information, please call: (512) 475-1295



PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.305

The Texas Lottery Commission (Commission) adopts the repeal of rule 16 TAC §401.305, relating to the Lotto Texas online game, without change as published in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8249).

The repeal is adopted concurrently with the adoption of a new Lotto Texas on-line game rule at 16 TAC §401.305. The Commission is repealing the old rule, rather than adopting amendments to the existing rule, to change the structure of the rule so that the rule is easier to understand.

The Commission received no comments on the repeal of §401.305.

The repeal is adopted under Government Code, §466.015 which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery, and under Government Code, §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The repeal implements Government Code, Chapter 466.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 16, 2006.

TRD-200601681

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: April 23, 2006

Proposal publication date: December 9, 2005

For further information, please call: (512) 344-5113



16 TAC §401.305

The Texas Lottery Commission (Commission) adopts new rule 16 TAC §401.305 relating to the Lotto Texas online game. The Commission adopts the rule with changes to the proposed text as published in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8252).

The rule as adopted changes the proposed text of subsection (c)(3) to clarify the distinction between completing a playboard and purchasing a play. The rule as adopted adds subsection (f)(8) to clarify that there will be no further allocations to a Lotto Texas prize reserve fund. The rule as adopted changes the proposed text of subsection (f)(4)(B) to clarify that funds allocated to the Lotto Texas prize reserve fund will be depleted before other funds will be used to pay the fourth prize in a situation in which the total amount of the fourth prize for a drawing exceeds the amount of Lotto Texas ticket sales allocated for the fourth prize. In response to public comment, the rule as adopted changes the proposed text of subsections (f)(2)(C) and (f)(3)(C), to provide that second and third prize payments will be rounded to the nearest whole dollar, rather than being rounded down to the nearest

whole dollar amount. The new rule is adopted concurrently with the adoption of the repeal of the existing 16 TAC §401.305. The Commission is adopting a new rule, rather than adopting amendments to the existing rule, to change the structure of the rule so that the rule is easier to understand. Hereinafter, the term "new Lotto Texas rule" refers to the rule adopted by this action and made effective on April 23, 2006. The term "current Lotto Texas rule" refers to the rule in effect until April 23, 2006.

BACKGROUND AND PURPOSE

In May 2003 the Commission changed the Lotto Texas game from a game with a 6-of-54 matrix to a game with a 5-of-44 matrix and a separate 1-of-44 bonus ball matrix. After that change, there was a decline in sales of Lotto Texas tickets.

In May 2005 the Commission conducted studies regarding the Lotto Texas game in McAllen, Dallas and Houston. Participants responded to specific questions on a questionnaire and also participated in moderated discussions about participants' likes and dislikes in connection with the current Lotto Texas game and in connection with possible changes to the game. The Commission posted a link to the questionnaire on its website to provide an opportunity for players throughout the state to participate in the studies. The studies indicated that players generally disliked the bonus ball and preferred a game in which they selected six numbers from a single matrix. Although the studies indicated that players would prefer a game without a bonus ball, the studies were inconclusive as to whether eliminating the bonus ball would lead to higher sales of Lotto Texas tickets. Participants also expressed the view that the 1-in-47,784,352 odds of winning the jackpot were too high.

The new Lotto Texas rule changes the current Lotto Texas rule by eliminating the separate bonus ball matrix. Subsections (b)(1) and (d)(2) of the new rule provide for a single 6-of-54 matrix. Under the new rule there will be a 1-in-25,827,165 chance that a play will match the six numbers drawn in a drawing. A return to a 6-of-54 matrix will allow Commission staff to respond to player dissatisfaction with the bonus ball and to carefully monitor sales to determine if sales improve with the elimination of the bonus ball. Staff will evaluate sales to determine what changes may need to be made to the game in the future.

The new Lotto Texas rule changes the current Lotto Texas rule by setting out a prize structure that corresponds to the new matrix. See section (f). The current Lotto Texas rule sets out a prize structure that provides for prizes for the following matches: five of 44 and the bonus ball; five of 44 and not the bonus ball; four of 44 and the bonus ball; four of 44 and not the bonus ball; three of 44 and the bonus ball; three of 44 and not the bonus ball; two of 44 and the bonus ball; and one of 44 and the bonus ball. The new rule sets out a prize structure that provides prizes for matching three, four, five or six of the six numbers drawn. In connection with each draw, 40.47 percent of the proceeds from Lotto Texas ticket sales will be allocated to the 6-of-6 (jackpot) prize. The jackpot amount is to be divided evenly among all jackpot winners. If there is no winner, the amount allocated for the jackpot prize will become part of the jackpot prize for the next draw. The jackpot prize will be the greater of the total allocations from Lotto Texas ticket sales or the amount advertised. If the total allocations from Lotto Texas ticket sales are insufficient to pay an advertised jackpot, the Commission will first use the Lotto Texas prize reserve fund and then any other available source of funds. In connection with each draw, 2.23 percent of the proceeds from Lotto Texas ticket sales will be allocated to the 5-of-6 (second) prize. The allocation is to be divided evenly among all winners

at that level. Prizes will be rounded to the nearest dollar. Any part of the second prize for a drawing that is not paid in prizes will be carried forward and will become part of the second prize for the next drawing. In connection with each draw, 3.28 percent of the percentage of the proceeds from Lotto Texas ticket sales will be allocated to the 4-of-6 (third) prize. The allocation is to be divided evenly among all winners at that level. Prizes will be rounded to the nearest dollar. Any part of the third prize for a drawing that is not paid in prizes will be carried forward and will become part of the third prize for the next drawing. The 3-of-6 (fourth) prize is \$3, and 4.02 percent of Lotto Texas ticket sales is allocated for the fourth prize. If that allocation is insufficient in connection with a particular draw, the Commission will first use the Lotto Texas prize reserve fund and then any other available source of funds.

The new Lotto Texas rule will change the current Lotto Texas rule by eliminating the concept of "prize pool." The current Lotto Texas rule allocates a percentage of Lotto Texas ticket sales to a "prize pool" and then allocates a percentage of the "prize pool" to each prize level. The new rule eliminates the concept of "prize pool" and simply allocates a percentage of Lotto Texas tickets sales to each prize level. Commission rules define the term "prize pool" as the percentage of ticket sales that is allocated to prizes for a particular draw period. See 16 TAC §401.301(43). The concept is not applicable in a game in which the amount of sales devoted to prizes in connection with a drawing varies over time because of guaranteed prizes. Also, the new Lotto Texas rule allows the Commission to draw on sources other than Lotto Texas ticket sales to fund prizes. For those reasons, the concept of "prize pool" as a percentage of sales is inapplicable to the new Lotto Texas rule.

The new Lotto Texas rule will change the current Lotto Texas rule by not allocating a percentage of proceeds from Lotto Texas ticket sales to a prize reserve fund. Previous versions of the Lotto Texas rule have allocated a portion of sales to a Lotto Texas prize reserve fund. The Commission has determined that this is an unnecessary accounting mechanism because the State Lottery Account is available for the payment of prizes for any game and there is therefore no need to segregate proceeds by game.

The new Lotto Texas rule will change the current Lotto Texas rule by providing for rounding to the nearest whole dollar amount, rather than rounding down to the nearest whole dollar amount.

As published in the Texas Register on December 9, 2005, paragraph (c)(3) of the proposed rule provided, "A player may use a single playslip to purchase up to five plays." As adopted, paragraph (c)(3) provides, "A player may complete up to five playboards on a single playslip." The change was made to make the use of the term "play" consistent with the definition of the term in the new rule.

PUBLIC COMMENT

The Texas Lottery Commission held a public comment hearing at 10 a.m. on Monday, December 19, in the Commission auditorium at 611 E. Sixth Street, Austin, Texas, to receive comment on the proposed Lotto Texas rule published on December 9, 2005, and the proposed repeal of 16 TAC §401.305, as well as on other proposed rules, rule repeals, and rule amendments not adopted by this action. One person, Dawn Nettles, appeared to provide comments in opposition to the rule as published in the Texas Register on December 9, 2005. Ms. Nettles stated that the proposed game was certain to fail, particularly because the allocations to lower-tier prizes were too low. She noted that she

had opposed two previous versions of Lotto Texas with a 6-of-54 matrix and that the lower-tier prize allocations in that version of the game were better than the lower-tier prize allocations in the proposed rule. Ms. Nettles restated her objections to the proposed rule in a poll posted on her website. She later forwarded to the Commission by fax more than 950 of the responses she had received to the poll.

In addition to the written comments forwarded by fax by Ms. Nettles, the Commission received more than 450 written comments through the Commission website and through the mail. One group, Lottery Dynamics, Inc., generally supported the new Lotto Texas rule, but made suggestions for language that would give the Commission more flexibility in making future enhancements to the game.

Many comments were the same as or similar to other comments. The following descriptions of comments and responses to comments may apply to a number of separate but similar comments, including the comments Ms. Nettles made at the public comment hearing and the comments from her website poll.

The comments included general support for the elimination of the bonus ball feature of the Lotto Texas game.

Some people opposed any change to the game. The Commission disagrees. Commission research has shown that the bonus ball is unpopular with players. No change was made in response to these comments.

Many people suggested that the game should have a matrix other than 6 of 54, with odds more favorable to players. People suggested various matrices, but many people suggested the matrix should be 6 of 50. The Commission does not agree. The Commission must take many factors into consideration when developing a game matrix. It is important for the Commission to balance overall odds, jackpot odds, prize structure and payout, and potential jackpot growth in order to have a financially successful game and to maintain player interest. After evaluating different options, the Commission has concluded that a 6-of-54 matrix is the most appropriate matrix at this time. No change was made in response to these comments.

Many people commented that the prizes other than jackpot prizes ("lower-tier prizes") are too low. Some people said the game should have the same lower-tier prizes as the previous 6-of-54 Lotto Texas game. A number of people specifically said that the fourth prize should be \$5 rather than \$3. The Commission does not agree. Players expressed a preference for better odds of winning the jackpot prize. In order to maintain a game with attractively high jackpots, the proposed 6-of-54 matrix allocates a larger percentage of the sales to the jackpot prize category than did the previous 6-of-54 game, which existed from July 2000 through May 2003. In order to increase prize allocations for lower-tier prizes, a larger percentage of sales would have to be allocated to these prize tiers with less allocated to the jackpot tier. The Commission has concluded that allocating a sufficient percentage of sales to the jackpot prize tier to ensure jackpot growth and eliminating the bonus ball are the changes most likely to keep and attract players. No change was made in response to these comments.

Many people made suggestions for changing the prize structure by, for example, including a prize for matching two of the six winning numbers; eliminating the prizes for matching three or four of the six winning numbers; capping the jackpot; awarding the jackpot allocation to lower-level winners if there is no jackpot winner for a particular draw; establishing a fixed jackpot; spreading out

the jackpot; continuing a draw until there is a jackpot winner; allocating more money to the jackpot; allocating less money to the jackpot; setting a minimum jackpot; increasing starting jackpots; structuring the game to have lower jackpots and more winners; having a weekly jackpot winner; setting out a fixed rate of jackpot increases; or concentrating less on the jackpot amount. Some people opposed the fact that overall odds for winning a prize under the new Lotto Texas rule were less favorable to the players than the odds under previous versions of Lotto Texas. The Commission agrees that there are a number of possible prize structures and that it is important for the Commission to consider many different possibilities. Based on its research, however, the Commission has concluded that a prize structure with improved odds of winning a large jackpot is the appropriate prize structure at this time. The Commission will continue to research and evaluate various ideas for structuring prizes. No change was made in response to these comments.

Many people stated that the Commission should reinstate the original Lotto Texas rule. The Commission disagrees. The Commission has concluded that, at this time, the game set out in the new Lotto Texas rule has the appropriate combination of features. No change was made in response to these comments.

Some people commented that there should be no guaranteed prizes and that all prizes should be pari-mutuel. There are a number of ways to structure prizes for lottery games. The new Lotto Texas rule provides for a guaranteed \$3 prize at the fourth-prize level. Retailers frequently pay this prize, and it places less burden on retailers to know that this frequent prize will always be a certain amount. Also, the guaranteed fourth prize establishes a base level prize amount so that players know the minimum prize. At the jackpot level, the rule guarantees that the jackpot prize will be no less than the advertised amount. Advertising jackpots is important to generating interest in and sales for the game, and the new Lotto Texas rule guarantees that players can be assured that the jackpot prize will be no less than the advertised amount. No change was made in response to these comments.

Some people opposed pari-mutuel prizes or said that prizes other than the fourth prize should be for a guaranteed amount. The Commission disagrees. The new Lotto Texas rule provides for guaranteed prizes in some circumstances, but the Commission has concluded that guaranteeing prizes at all levels in the Lotto Texas game creates an unacceptable level of uncertainty about prize liability. No change was made in response to these comments.

Some people stated that the "prize pool" should be set out in the rule. Commission rules define the term "prize pool" as the percentage of ticket sales that is allocated to prizes for a particular draw period. 16 TAC §401.301(43). The concept is not applicable in a game in which the amount of sales devoted to prizes varies over time because of guaranteed prizes. Under the new Lotto Texas rule the Commission may draw on sources other than ticket sales to fund prizes. For that reason the concept of "prize pool" as a percentage of sales is inapplicable. Although the rule does not allocate a percentage of ticket sales for prize payments in connection with each individual drawing, the agency's independent statistician has determined that over the course of a year the payout for Lotto Texas should be at least 50 percent. No change was made in response to these comments.

Some people commented that there should be a guarantee that in connection with each draw that 50 percent of ticket sales will be allocated to prizes and that no money allocated to lower-tier prizes should be carried forward to the next draw. The Com-

mission disagrees. Because the fourth prize is a fixed prize, the percentage of sales allocated to prizes in connection with each draw will vary. The agency's independent statistician has determined, however, that over the course of a year, the payout for Lotto Texas should be at least 50 percent. No change was made in response to these comments.

Some people suggested that more than 50 percent of sales should be allocated to prizes. Over the course of a year, the payout for Lotto Texas should be at least 50 percent. The Commission has concluded that the projected prize payout strikes the appropriate balance between making the game appealing to players and generating funds for the Foundation School Fund. No change was made in response to these comments.

Some people stated that prize payments should be not rounded down to the nearest whole dollar, and that either there should be no rounding, or prizes should be rounded up or down to the nearest dollar, not down to the nearest dollar. The Commission agrees with this comment. The rule as adopted provides for rounding to the nearest whole dollar amount.

One comment was that the time of Lotto Texas drawings should be changed. The new Lotto Texas rule does not change the substance of the provision in the current rule regarding time of drawings. Time of drawings was not a focus of this rulemaking process. The Commission will continue to examine features of Lotto Texas that were not addressed in the current rulemaking process. No change was made in response to these comments.

Some people stated that players should not be required to select a payment option at the time of ticket purchase. The new Lotto Texas rule does not change the substance of the provisions in the current rule regarding jackpot payment options. Selection of jackpot payment options was not a focus of the current rulemaking process. The Commission is researching this issue, however, and may address this issue in a future rulemaking process. No change was made in response to these comments.

One comment was that the ticket price should be 50 cents. The new Lotto Texas rule does not change the price of a Lotto Texas ticket. The Commission will continue to examine features of Lotto Texas that were not addressed in the current rulemaking process. There is a 50-cent ticket available in the Pick 3 game. No change was made in response to these comments.

One comment was that multi-draw purchases for a full year should be allowed. The new Lotto Texas rule does not change the number of draws for which multi-draw purchase is available. The Commission will continue to examine features of Lotto Texas that were not addressed in the current rulemaking process. No change was made in response to these comments.

One comment was that the Commission should add a multiplier feature to Lotto Texas. The addition of a multiplier feature was not a focus of this rulemaking process. The Commission will continue to examine features of Lotto Texas that were not addressed in the current rulemaking process. No change was made in response to these comments.

One comment was that there should be a prize for selecting the bonus ball. The Commission does not agree. Players expressed a strong preference for eliminating the bonus ball altogether. No change was made in response to this comment.

Lottery Dynamics, Inc., commented that the jackpot should be defined in terms of a "base game jackpot prize" to give the Commission flexibility in adding future enhancements to the game. This concept was not a focus of this rulemaking process. The

Commission will continue to examine features of Lotto Texas that were not addressed in the current rulemaking process. No change was made in response to these comments.

Some people said that the Lotto Texas rule should include details on how the Commission calculates the amount a jackpot winner actually receives. In section (f), the rule sets out the basis on which the Commission calculates the amount a jackpot winner actually receives. Apparently the people who made this comment were expressing a desire that the rule include detail about how the Commission obtains information regarding investment of proceeds from ticket sales to fund 25 annual payments. This concept was not a focus of this rulemaking process. The Commission will continue to examine features of Lotto Texas that were not addressed in the current rulemaking process. No change was made in response to these comments.

Some people said that the Commission changed games too frequently. Some people stated that changes were too costly to the state. The Commission disagrees. The Commission has changed the Lotto Texas matrix only three times since its inception in November 1992. The Commission believes it is important to make game changes when appropriate to maintain or develop player interest and ticket sales. The Commission attributes the continued success of the instant ticket games to changes that keep the games fresh and help maintain player interest. No change was made in response to these comments.

One comment was that the Commission should post the number of tickets sold for each drawing. This concept was not a focus of this rulemaking process. The Commission will continue to examine features of Lotto Texas that were not addressed in the current rulemaking process. No change was made in response to these comments.

One comment was that the overall odds of winning a prize cannot be better than the odds of winning any particular prize. The Commission disagrees. The overall odds of winning any prize are smaller than the odds of winning a particular prize. For example, in a 6-of-54 lottery, the odds of matching at least 3 of 54 numbers (overall odds) are smaller than the odds of matching exactly 3 out of 54 (odds of winning a fourth prize). No change was made in response to these comments.

Some people interpreted the new Lotto Texas rule to mean that the third prize would be greater than the second prize. This is a misunderstanding of the rule. The percentage of ticket sales allocated to the third-prize level is greater than the percentage of ticket sales allocated the second-prize level because there are likely to be significantly more winners at the third-prize level. No change was made in response to these comments.

The comments also included comments about lottery games other than Lotto Texas; comments about Commission advertising; comments about drawing procedures and equipment, computerized drawings, holiday bonus drawings, and televising drawings; a comment recommending an independent players advocate; a comment recommending paying a larger percentage of sales to retailers; comments praising or criticizing lottery games in other states or countries; comments about legalizing casino gambling; negative comments about Commission personnel; negative comments about and suggestions for improving the quality of Commission management; assertions that the Commission is deceitful or dishonest and should avoid further scandal; comments that the Commission does not make adequate information available to the public; comments recommending thorough background checks of all people running

lottery games; negative comments about other state agencies, specific politicians, specific political parties, or politicians in general; comments expressing a belief that the Commission should contract with Texas businesses; comments suggesting that ticket security should be improved; recommendations regarding a new executive director for the Commission; concerns that lottery revenue is not supporting schools or otherwise being used as expected; comments expressing a desire for better information about lottery sales and about how lottery revenue is being used; preferences for how lottery revenue should be used; a suggestion that Lotto Texas should be eliminated entirely; comments expressing a preference that state-run lottery games be eliminated altogether; comments expressing concerns that winners were unfairly concentrated in certain parts of the state; complaints that in the past the Commission has not listened to what players want; complaints about previous rule changes; reminders about comments opposing previous rule changes; complaints that the lottery is no longer fun; complaints that lottery games are not fair; comments speculating that lottery games are rigged; comments indicating a preference for simplicity or transparency in rules; complaints about taxes on lottery winnings; comments expressing dissatisfaction with the fact that a payment of the present cash value jackpot is less than the total amount paid out in annual installments; comments expressing concern that Texas schools still have problems despite the existence of the lottery; comments advocating maximizing the amount of money that goes to education; comments expressing a desire for procedures under which players vote or otherwise establish game rules; complaints about the slow rate of jackpot growth in the recent past; complaints that games are not fair; complaints that there are too many lottery games; comments that only Texans or U.S. citizens should be allowed to play Texas lottery games; a comment expressing a desire for a longer period of time in which to claim a prize; a comment that employees of stores that sell lottery tickets should not be allowed to purchase lottery tickets; and other comments that did not address provisions of the Lotto Texas rule. These matters were not the focus of this rulemaking process. The Commission will continue to evaluate its performance in all areas in which it has authority to act. No change was made in response to these comments.

At a Commission meeting on February 27, 2006, the Commission solicited additional public comments from Ms. Nettles as well as from Ramon Rivera of GTECH Corporation. Both of them addressed matters that had been previously raised in public comment. In addition, Ms. Nettles suggested the possibility of lower starting jackpots or rolling the jackpot in smaller increments. The new Lotto Texas rule does not address either of these issues. No change was made in response to these comments.

LEGAL CERTIFICATION

The new section is adopted under Government Code, §466.015, which authorizes the Commission to adopt all rules necessary to administer the State Lottery Act and to adopt rules governing the establishment and operation of the lottery, and under Government Code §467.012, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

STATUTORY AUTHORITY

The new rule implements Government Code, Chapter 466.

§401.305. "Lotto Texas" On-Line Game Rule.

(a) Lotto Texas. The executive director is authorized to conduct a game known as "Lotto Texas." The executive director may issue further directives for the conduct of Lotto Texas that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to On-Line Game Rules (General)).

(b) Definitions. When used in this rule, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Play--The selection of six different numbers from 1 through 54 for one opportunity to win in Lotto Texas and the purchase of a ticket evidencing that selection.

(2) Playboard--A field of 54 numbers on a playslip for use in selecting numbers for a Lotto Texas play.

(3) Playslip--An optically readable card issued by the commission for use in selecting numbers for one or more Lotto Texas plays.

(4) Roll cycle--A series of drawings that ends when there is a drawing for which one or more tickets are sold that match the six numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match the six numbers drawn in the drawing.

(c) Plays and tickets

(1) A ticket may be sold only by an on-line retailer and only at the location listed on the retailer's license. A ticket sold by a person other than an on-line retailer is not valid.

(2) The price of a play is \$1.

(3) A player may complete up to five playboards on a single playslip.

(4) A player may use a single playslip to purchase the same play(s) for up to 10 consecutive drawings, to begin with the next drawing after the purchase.

(5) A person may select numbers for a play either:

(A) by using a self-service terminal;

(B) by using a playslip to select numbers;

(C) by requesting a retailer to use Quick Pick to select numbers; or

(D) by requesting a retailer to manually enter numbers.

(6) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually is not valid.

(7) An on-line retailer may accept a request to manually enter selections or to make quick-pick selections only if the request is made in person.

(8) At the time of making a play, a person may select the option for payment of the cash value of a share of the jackpot if the play is a winning play.

(9) An on-line retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers selected for each play, the number of plays, the draw date(s) for which the plays were purchased, the jackpot payment option, and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock.

(10) A playslip has no monetary value and is not evidence of a play.

(11) The purchaser is responsible for verifying the accuracy of the numbers and other selections shown on a ticket.

(12) The commission shall establish a time period before each drawing during which tickets may not be sold.

(13) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements.

(d) Drawings

(1) Lotto Texas drawings shall be held each week on Wednesday and Saturday at 10:12 p.m., central time. The executive director may change the drawing schedule, if necessary.

(2) Six different numbers from 1 through 54 shall be drawn at each Lotto Texas drawing.

(3) Numbers drawn must be certified by the commission in accordance with the commission's drawing procedures.

(4) The numbers selected in a drawing shall be used to determine all winners for that drawing.

(5) Each drawing shall be witnessed by an independent certified public accountant. All drawing equipment used shall be examined by a commission drawings representative and the independent certified public accountant immediately before each drawing and immediately after each drawing.

(e) Advertised jackpots. For each drawing, the commission shall approve a jackpot amount to be advertised. The advertised amount shall be an amount payable in 25 annual installments. To the extent that advertised amount is based on projected sales, the projections shall be fair and reasonable. The commission may approve an increase in the amount of the jackpot originally advertised for a drawing if the increase is supported by reasonable sales projections.

(f) Prizes

(1) Jackpot prize (first prize).

(A) A person who holds a valid ticket for a play matching (in any order) the six numbers drawn in a drawing is entitled to a share of the jackpot prize (first prize) for the drawing.

(B) The jackpot prize for a drawing is the greater of

(i) 40.47 percent of the proceeds from Lotto Texas ticket sales for all drawings in the roll cycle and any earnings on an investment of all or part of the proceeds from ticket sales, paid in 25 annual installments; or

(ii) The amount advertised in accordance with subsection (e) of this section as the estimated jackpot for the drawing, paid in 25 annual installments.

(C) Except as provided by subparagraph (F) of this paragraph, a person who is entitled to a share of a jackpot prize and who did not opt to receive the cash value of the jackpot prize shall receive payment in 25 annual installments.

(D) The first installment payment shall be made upon completion of commission validation procedures. The subsequent 24 installment payments shall be made annually on the 15th day of the month in which the applicable drawing occurred.

(E) The second through 24th installment payments shall be in equal amounts. The first installment payment may be equal to or higher than the subsequent installment payments.

(F) If a person would otherwise receive total installment payments of \$2 million or less, the commission shall pay the person, upon completion of all validation procedures, a single payment in the amount of the cash value of those total installment payments. The cash

value is the cost on the first business day after the applicable drawing of funding those installment payments.

(G) A person who is entitled to a share of the jackpot and who selected the cash value option shall receive the greater of the following two amounts:

(i) a share of 40.47 percent of total sales for the roll cycle; or

(ii) the cost on the day after the drawing of funding a share of installment payments under subparagraph (B)(ii) of this paragraph.

(H) A payment under subparagraph (G) of this paragraph shall be made upon completion of commission validation procedures.

(I) Any investment necessary to fund a jackpot prize shall be made on the first business day after a drawing for which one or more tickets were sold that match the six numbers drawn in the drawing.

(J) A claim for a jackpot prize must be presented at the Austin claim center.

(K) If sales proceeds and the Lotto Texas prize reserve fund are not sufficient to pay a jackpot prize, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, §466.355.

(2) Second prize.

(A) A person who holds a valid ticket for a play matching (in any order) five of the six numbers drawn in a drawing is entitled to a share of the second prize for that drawing.

(B) The second prize consists of 2.23 percent of the proceeds from Lotto Texas ticket sales for the drawing and any amounts carried forward under subparagraph (D) of this paragraph.

(C) A payment made to a person for a share of the second prize for a drawing shall be rounded to the closest whole dollar amount. An amount of fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the second prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the second prize for the next drawing.

(3) Third prize.

(A) A person who holds a valid ticket for a play matching (in any order) four of the six numbers drawn in a drawing is entitled to a share of the third prize for that drawing.

(B) The third prize consists of 3.28 percent of the proceeds from ticket sales for the drawing and any amounts carried forward under subparagraphs (C) and (D) of this paragraph.

(C) A payment made to a person for a share of the third prize for a drawing shall be rounded to the closest whole dollar amount. An amount of exactly fifty cents shall be rounded up to the nearest whole dollar amount.

(D) Any part of the third prize for a drawing that is not paid in prizes shall be carried forward and shall become part of the third prize for the next drawing.

(4) Fourth prize.

(A) A person who holds a valid ticket for a play matching (in any order) three of the six numbers drawn in a drawing is entitled to a guaranteed prize of \$3.

(B) If 4.02 of proceeds from Lotto Texas ticket sales and the Lotto Texas prize reserve fund are not sufficient to pay all fourth prizes for a draw, the commission shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, §466.355.

(C) To the extent that the total amount of fourth prizes for a drawing is less than 4.02 percent of the proceeds from ticket sales of for the drawing, the difference shall be carried forward to fund future fourth prize payments.

(5) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

(6) A share of a prize is determined by dividing the prize by the number of winning plays for that prize.

(7) Jackpot payment amounts are calculated on the first business day after the applicable drawing. A claimant is not entitled to interest or other earnings on those amounts, regardless of when the claim is actually presented and regardless of the dates on which payments are made.

(8) There will be no allocations from Lotto Texas ticket sales to the Lotto Texas prize reserve fund.

(g) Jackpot information on Commission website

(1) After the commission has approved an advertised estimated jackpot under subsection (e) of this section, the commission shall post the following information on the agency website:

(A) the amount of ticket sales, if any, for previous drawings in the roll cycle;

(B) the amount of projected ticket sales for the upcoming drawing;

(C) investment information used to determine the advertised estimated jackpot; and

(D) other information used to determine the advertised estimated jackpot.

(2) After the commission determines that one or more tickets have been sold that match the six numbers drawn in a drawing, the commission shall post on the agency website information used to calculate the jackpot prize.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 16, 2006.

TRD-200601680

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

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For further information, please call: (512) 344-5113



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER DD. COMMISSIONER'S RULES CONCERNING ALTERNATIVE EXIT-LEVEL ASSESSMENTS

19 TAC §§101.4001, 101.4003, 101.4005

The Texas Education Agency (TEA) adopts new §§101.4001, 101.4003, and 101.4005, concerning alternative exit-level assessments. The new sections are adopted without changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 631) and will not be republished. The adopted new sections implement the requirements of the Texas Education Code (TEC), §39.025(d) - (e), regarding exit-level performance required for a student to receive a high school diploma. The rule action allows eligible students to substitute an approved alternative exit-level assessment for the Texas Assessment of Knowledge and Skills (TAKS) exit-level test for the same subject area.

The 79th Texas Legislature, 2005, passed House Bill 25, relating to admission to and transition assistance within the public school system for school-age dependents of military personnel and other students. House Bill 25 amended TEC, §39.025, to require the commissioner of education by rule to adopt one or more alternative nationally recognized norm-referenced assessment instruments to administer to a student to qualify for a high school diploma. This legislation also requires the commissioner of education to establish a required performance level for any such assessment instrument that is at least as rigorous as the performance level for the Texas Assessment of Knowledge and Skills (TAKS) test for the same subject area. An eligible student will be exempt from the exit-level TAKS assessments in each subject area in which the student has met the passing standard established by the commissioner on an approved alternative exit-level assessment. A student is eligible if he or she enrolls after January 1 of the year in which the student is otherwise eligible to graduate and is enrolling for the first time in a public school in this state or after an absence of at least four years from any public school in this state.

In the spring of 2003, the Texas Education Agency (TEA) conducted college readiness studies to provide data to assist the Texas Higher Education Coordinating Board (THECB) in establishing performance standards on the exit-level TAKS assessments that would demonstrate a student's readiness to enroll in an institution of higher education. These studies show the link between student performance on the TAKS and performance on the SAT® and the ACT® assessments. The studies included information about the student performance level that would equate to the performance level required for the TAKS exit-level assessment instrument for the same subject.

The rules in 19 TAC Chapter 101, Assessment, Subchapter DD, Commissioner's Rules Concerning Alternative Exit-Level Assessments, explain the testing requirements to receive a high school diploma from a Texas public school; establish the criteria for determining a student's eligibility to substitute an alternative exit-level assessment for a TAKS exit-level assessment to qualify for a high school diploma from a Texas public school; and define the procedures for verifying the results of an alternative exit-level assessment for an eligible student. These new rules include the following provisions.

Section 101.4001 explains the testing requirements to receive a high school diploma from a Texas public school. The commissioner adopts the SAT® verbal/critical reading tests and ACT®

English and mathematics tests as alternative exit-level assessments that eligible students with qualifying scores may substitute respectively for TAKS exit-level assessments in English language arts and mathematics beginning in the spring of 2006. The results of the college readiness studies were applied to establish the required passing standards on these assessments. The adopted passing standard for the SAT® alternative assessment for English language arts is at least 472 and for mathematics is at least 461. The adopted passing standard for the ACT® alternative assessment for English language arts is at least 17.7 and for mathematics is at least 19.5. This section also specifies that once a district or charter school has verified that the student is eligible for and has satisfied the requirements under this subchapter and satisfied the coursework requirements to be eligible for a high school diploma in Texas, the district or charter school is authorized to grant a diploma to the student.

Section 101.4003 establishes the criteria for determining a student's eligibility to substitute an alternative exit-level assessment for a TAKS exit-level assessment to qualify for a high school diploma from a Texas public school. This section specifies that a school district or charter school will be responsible for determining the eligibility of a student under this subchapter.

Section 101.4005 defines the procedures for verifying the results of an alternative exit-level assessment for an eligible student. This section specifies that students who are eligible under the new law will be required to provide to the district or charter school his or her official results from an approved alternative exit-level assessment. Upon receipt of the results on an applicable assessment from an eligible student, the school district or charter school must verify the student's score and determine whether the student has met the performance standard required to qualify for a public high school diploma in Texas as established by the commissioner.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Education Code, §39.025, which requires the commissioner of education to adopt by rule one or more alternative nationally recognized norm-referenced assessment instruments to administer to a student to qualify for a high school diploma. The statute also requires the commissioner to establish a required performance level for any such assessment instrument that is at least as rigorous as the performance level for the Texas Assessment of Knowledge and Skills test for the same subject area.

The new sections implement the Texas Education Code, §39.025.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

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SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE STATEWIDE TESTING CALENDAR AND UIL PARTICIPATION

19 TAC §101.5001, §101.5003

The Texas Education Agency (TEA) adopts new §101.5001, and §101.5003, concerning the statewide testing calendar and University Interscholastic League (UIL) participation. The new sections are adopted with a change to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 633). The change is to correct a statutory reference in §101.5001(a). The adopted new rules implement Texas Education Code (TEC), §33.0812, added by Senate Bill 658, 79th Texas Legislature, 2005, relating to the scheduling of certain UIL competitions. The new rules address provisions related to the testing calendar and alternate test dates.

The 79th Texas Legislature passed Senate Bill 658, which prohibits participation in a UIL area, regional, or state competition during the week in which the primary administration of assessment instruments under TEC, §39.023(a), (c), or (l), occurs. This legislation also requires that the commissioner adopt rules to provide the UIL with a periodic calendar of dates reserved for testing for their planning purposes. TEC, §33.0812, added by this bill specifies that the periodic calendar must be provided at least every three years on or before May 1 of the year preceding the three-year cycle of reserved testing dates. In adopting rules, this legislation requires that the commissioner include a procedure for changing, in exceptional circumstances, testing dates reserved under the periodic calendar; define circumstances that constitute exceptional circumstances; and establish criteria for determining whether a UIL area, regional, or state competition must be canceled if that event conflicts with a changed testing date.

The new rules in 19 TAC Chapter 101, Assessment, Subchapter EE, Commissioner's Rules Concerning the Statewide Testing Calendar and UIL Participation, address provisions related to the testing calendar and alternate test dates, as follows.

Section 101.5001 includes the provisions that the commissioner provide the UIL with the three-year calendar through publication on the Texas Education Agency website and that the commissioner notify the UIL of any necessary changes to the schedule. The cross reference in subsection (a) to the TEC, §38.0812, was corrected to cross reference the TEC, §33.0812.

Section 101.5003 includes the provision that alternate test dates be considered on a case-by-case basis. The new rule also includes the definition of exceptional circumstances that may affect district or campus ability to administer or student performance on an assessment.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Education Code, §33.0812, which requires the commissioner of education to adopt rules to provide the UIL with a periodic calendar of dates reserved for testing. In adopting rules, the statute requires the commissioner to include a procedure for changing, in exceptional circumstances, testing dates reserved under the periodic calendar; define circumstances that constitute exceptional circumstances; and establish criteria for determining whether a

UIL area, regional, or state competition must be canceled if the event conflicts with a changed testing date.

The new sections implement the Texas Education Code, §33.0812.

§101.5001. Testing Calendar.

(a) In accordance with Texas Education Code, §33.0812, the commissioner of education shall determine the school week during the school year in which the primary administrations of assessment instruments are administered.

(b) Through publication on the Texas Education Agency website, the commissioner shall provide the University Interscholastic League (UIL) with a three-year calendar of dates, beginning with the 2006 - 2007 school year, reserved for testing on or before May 1 of the year preceding the three-year cycle of reserved testing dates.

(c) The commissioner may change the dates reserved for testing as necessary. The commissioner shall notify the UIL of any changes to the schedule for the primary administrations of the statewide assessments.

(d) If a change to the primary administration testing calendar creates a scheduling conflict between a UIL area, regional, or state competition and the statewide assessments, the commissioner shall determine whether those UIL events must be cancelled or rescheduled.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 22. EXAMINING BOARDS

PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.16

The Texas Funeral Service Commission (Commission) adopts amendments to §203.16, concerning Requirements Relating to Embalming with a minor change to the proposal as published in the January 27, 2006, issue of the *Texas Register* (31 TexReg 455). The section title is being changed from "Minimum Standards for Embalming" to "Requirements Relating to Embalming".

The amendments separate embalming standards from reporting requirements, prescribe the minimum information that must be included in embalming case reports, require embalming case reports to be retained for two years following the date of the embalming procedure, and require establishments to make the forms available to the commission staff upon request.

The amended section does not prescribe the use of a particular embalming case report form. Establishments may use their own form so long as the form used contains the minimum information required by the amended section.

The commission received no comments regarding adoption of the amendments.

The amendments are adopted under Texas Occupations Code §651.152. The commission interprets this section as authorizing it to adopt rules and forms as necessary to administer Chapter 651.

§203.16. Requirements Relating to Embalming.

(a) In order to ensure the maximum inhibition of pathogenic organisms in the dead human body, the following minimum standards of performance shall be required of each licensed embalmer in the State of Texas in each instance in which he or she is authorized or required to embalm a dead human body.

(1) Embalming shall be performed only by embalmers licensed by the commission, in properly equipped and licensed establishments, or in the event of a disaster of major proportions, in facilities designated by a medical examiner, coroner, or state health official. Only three types of people may under certain circumstances assist licensed embalmers in embalming: provisional licensed embalmers under the personal supervision of a licensed embalmer; students who are enrolled in an accredited school of mortuary science working on a case intended toward completion of the student's clinical requirements, under the personal supervision of a licensed embalmer and with written permission to assist the embalmer from the person responsible for making arrangements or next of kin; and, in the event of a disaster of major proportions and with the prior approval of the executive director of the commission, embalmers licensed in another state as long as they are working with or under the general supervision of a person licensed as an embalmer in this state. It is not the intent of this rule to supersede §203.22 of this title (relating to Required Documentation for Embalming) which authorizes embalming using mortuary students.

(2) In order to prevent those involved in the embalming procedure from becoming unwitting carriers of pathogenic organisms into the community, they shall be required to utilize such protective devices as gloves capable of being sterilized, aprons or operating gowns during the embalming procedure. Disposable garments and/or gloves shall be permitted.

(3) Clothing directly exposed to contamination by pathogenic organisms shall either be burned or thoroughly cleaned and disinfected with a solution having phenol coefficient of not less than one before delivery to any person or before any further utilization.

(4) The technique utilized to effect eye, mouth, and lip closure shall be any technique accepted as standard in the profession. Regardless of the technique chosen, the embalmer shall be required to achieve the best results possible under prevailing conditions.

(5) The entire body shall be washed with an antiseptic soap or detergent. Fingernails, hair (including mustache and beard) shall be thoroughly cleaned, either before or immediately after arterial injection.

(6) Body orifices (open lesions and surgical incisions, nostrils, mouth, anus, and vagina) shall be treated with appropriate topical disinfectants either before or immediately after arterial injection. After cavity treatment has been completed, body orifices shall be packed in cotton saturated with a suitable disinfectant of a phenol coefficient not less than one.

(7) The arterial fluid to be injected shall be one commercially prepared and marketed with its percent of formaldehyde, or other approved substance, by volume (index) clearly marked on the label or in printed material supplied by the manufacturer.

(8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1.0% formaldehyde, or an approved substance that acts the same as formaldehyde, and as the professional experience of the embalmer indicates, one gallon of dilute solution may be used for each 50 pounds of body weight. Computation of solution strength is as follows: $C \times V = C' \times V'$ C = strength of concentrated fluid V = volume of ounces of concentrated fluid C' = strength of dilute fluid V' = volume of ounces of dilute fluid

(9) Abdominal and thoracic cavities shall be treated in the following manner.

(A) Liquid, semi-solid, and gaseous contents which can be withdrawn through a trocar shall be aspirated by the use of at least 18 inches (mercury) vacuum.

(B) Concentrated, commercially prepared cavity fluid which is acidic in nature (6.5pH or lower) and contains at least two preservative chemicals shall be injected and evenly distributed throughout the aspirated cavities. A minimum of 16 ounces of concentrated cavity fluid shall be used for each adult body.

(C) Should distension and/or purge occur after treatment, aspiration and injection as required shall be repeated as necessary.

(10) The embalmer shall be required to check each body thoroughly after treatment has been completed. Any area not adequately disinfected by arterial and/or cavity treatment shall be injected using a hypodermic needle with disinfectant fluid for maximum disinfecting results.

(11) On bodies in which the arterial circulation is incomplete or impaired by advance decomposition, burns, trauma, autopsy, or any other cause, the embalmer shall be required to use the hypodermic method to inject all areas which cannot be properly treated through whatever arterial circulation remains intact (in any).

(12) In the event that the procedures in paragraphs (1) - (11) of this subsection leave a dead human body in condition to constitute a high risk of infection to anyone handling the body, the embalmer shall be required to apply to the exterior of the body a standard embalming powder and to enclose the body in a zippered plastic or rubber pouch prior to burial or other disposal.

(13) Dead human bodies donated to the State Anatomical Board shall be embalmed as required by the State Anatomical Board and where conflicting requirements exist, those requirements of the State Anatomical Board shall prevail.

(14) Nothing in this section shall be interpreted to require embalming if the next-of kin does not authorize embalming.

(15) All bodies should be treated in such manner and maintained in such an atmosphere as to avoid infestation by vermin, maggots, ants, and other insects; however, should these conditions occur, the body should be treated with an effective vermicide and/or insecticide to eliminate these conditions.

(16) No licensed establishment or licensed embalmer shall take into its or the embalmer's care any dead human body for embalming without exerting every professional effort, and employing every

possible technique or chemical, to achieve the highest level of disinfecting.

(17) Nothing in this section shall be interpreted to prohibit the use of supplemental or additional procedures or chemicals which are known to and accepted in the funeral service profession and which are not specifically mentioned in this subsection.

(b) Minor variations in these procedures shall be permitted as long as they do not compromise the purpose of this rule as stated in subsection (a) of this section.

(c) All embalming case reports must contain, at a minimum, all the information on the case-report form published following this subsection. This form is also on file in the commission's offices and may be accessed from the commission's website at www.tfsc.state.tx.us. Staff will make a copy of this form available upon request. Funeral establishments may use other forms, so long as the forms contain all the information on the published form. A case report shall be completed for each embalming procedure. The completed form shall be retained for two years following the procedure date and made available to the commission, upon request.
Figure: 22 TAC §203.16(c)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2006.

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O.C. Robbins

Executive Director

Texas Funeral Service Commission

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For further information, please call: (512) 936-2466



22 TAC §203.29

The Texas Funeral Service Commission (Commission) adopts an amendment to §203.29, concerning Funeral Establishment Names without changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8585) and will not be republished.

The amendment allows funeral establishments to use assumed names, provided that they comply with the requirements of the Texas Assumed Business or Professional Name Act.

The commission received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Occupations Code §651.152. The commission interprets this section as authorizing it to adopt rules as necessary to administer Chapter 651.

No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.17

The Texas Parks and Wildlife Commission adopts new §53.17, concerning Miscellaneous Fees, without changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8628).

The new section establishes the fee for an off-highway vehicle decal. The enactment of Senate Bill 1311 (S.B. 1311) by the 79th Texas Legislature (Regular Session) added Parks and Wildlife Code, Chapter 29, which created the Off-Highway Vehicle Trail and Recreational Area Program and added §11.046 and §11.046 regarding the Off Highway Vehicle Trails and Recreational Area Account. Under the provisions of S.B. 1311, a person may not operate an off-highway vehicle on a trail or in a recreational area established or maintained by the department under Chapter 29, or on land purchased or developed under a grant made under Chapter 29 or any other grant program operated or administered by the department without having obtained an off-highway vehicle decal. The fee for the off-highway vehicle decal is established by S.B. 1311 at \$8. The rule is necessary to ensure that a record of all fees imposed or collected by the department is reflected in the Texas Administrative Code.

The new rule will function by providing a record in rule of the fee for the off-highway vehicle decal.

The department received four comments opposing adoption of the proposed rule. Three of the persons commenting in opposition elaborated or provided specific reasons for opposition. Those comments, accompanied by the department's response, follow.

One commenter opposed adoption of the proposed rule and stated that the fee would provide little or nothing in the way of benefit to the off-highway vehicle user. The department disagrees with the comment and responds that the purpose of the decal fee is to generate revenue for the Off-Highway Vehicle Trail and Recreational Area Program, which was created to provide recreational opportunities for the off-road community. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rule and stated that the department was 'making it too costly and complicated for the working class.' The department disagrees with

the comment and responds that the fee amount is established by statute, not by department action. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rule and stated that there was no benefit in requiring a decal, displaying the decal, or in charging an \$8.00 fee. The commenter also stated that the fee was 'more unnecessary administration, creating an additional burden for personnel to administer.' The department disagrees with the comment and responds that the purpose of the decal fee is to generate revenue for the Off-Highway Vehicle Trail and Recreational Area Program, which was created by statute to provide recreational opportunities for the off-road community. No changes were made as a result of the comment.

The department received seven comments supporting adoption of the proposed rule.

No groups or associations commented on the proposed rule.

The new rule is adopted under the authority of Parks and Wildlife Code, §29.003, which authorizes the commission to establish a fee for the off-highway vehicle decal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright

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DIVISION 3. TRAINING AND CERTIFICATION FEES

31 TAC §53.50

The Texas Parks and Wildlife Commission adopts an amendment to §53.50, concerning Training and Certification Fees, without changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8628).

The amendment increases the fee for attending a hunter education class from \$10 to \$15. The amendment is necessary to maximize instructor recruitment efforts by increasing the monetary incentive for persons to become hunter education instructors. Under Parks and Wildlife Code, §62.014, the commission by rule may establish a procedure to allow a volunteer hunter education instructor to retain an amount from the fees collected by the instructor to cover the instructor's actual and necessary out-of-pocket expenses. The current rule, which has been in effect since 1995, authorizes an instructor to retain \$5. The department has determined that economic factors over the last 10 years have affected the out-of-pocket expenses incurred by volunteer instructors, and that it is appropriate to increase the amount retained by volunteer instructors to \$10. Volunteer instructors are critical to the viability of the hunter education program. Last year, approximately 3,000 volunteers provided hunter education training to 33,000 persons in Texas.

The amendment will function by requiring persons who attend a hunter education class to pay a fee of \$15.

The department received two comments opposing adoption of the proposed rule. Of the two comments, one articulated a specific reason for opposing adoption, stating that there should be no fees for residents because there are too many taxes. The department disagrees with the comment and responds that the fees for hunter education fund the delivery of the program services, which have been conclusively proven to reduce hunting accidents and thereby protect the safety of the hunting public. No changes were made as a result of the comments.

The department received seven comments supporting adoption of the proposed rule.

No associations or groups commented on the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §62.014, which authorizes the commission to establish a fee not to exceed \$15 to defray the costs of administering a hunter education program and to establish a procedure to allow a volunteer instructor to retain an amount from the fees collected by a volunteer hunter education to cover actual and necessary out-of-pocket expenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 57. FISHERIES

SUBCHAPTER K. SCIENTIFIC AREAS

31 TAC §57.921

The Texas Parks and Wildlife Commission adopts an amendment to §57.921, concerning the Redfish Bay State Scientific Area (RBSSA), with changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6239).

The change to subsection (c) alters the provisions of paragraph (1) to exclude the property of the Port of Corpus Christi Authority from the boundaries of Redfish Bay State Scientific Area.

The change to subsection (e) establishes an effective date of May 1, 2006, for the subsection. The change also makes non-substantive syntactic changes to enhance readability, clarity, and sense.

The change to subsection (e) also makes explicit allowance for the usage of anchors and trolling motors within the Redfish Bay State Scientific Area.

The change excludes proposed subsections (g) and (h), which proposed no-propeller zones, specific ingress and egress lanes where operation of submerged propellers would be allowed, and set forth exceptions.

The rules are necessary because submerged seagrass meadows are a dominant, unique subtropical habitat in many Texas bays and estuaries and there is concern over damage accumulating in these meadows from the improper use of propeller driven vessels (Pulich et al. 1997). Seagrasses are highly evolved marine flowering plants which play critical roles in the coastal environment, including nursery habitat for estuarine fisheries, as a major source of organic biomass for coastal food webs, effective agents for stabilizing coastal erosion and sedimentation, and major biological agents in nutrient cycling and water quality processes (Brown-Peterson et al. 2002, Perez-Dominguez and Holt 2003, Stunz et al. 2003). Recent studies show that seagrasses are sensitive to physical stress from human disturbances (Montagna et al. 1998). As a result, many Texas scientists, resource managers and environmentally aware citizens have concerns about the health of these seagrass resources.

In January 1999, TPWD, the Texas General Land Office (GLO) and the Texas Natural Resource Conservation Commission (now the Texas Commission on Environmental Quality-TCEQ) published 'The Seagrass Conservation Plan for Texas' (TPWD 1999). The Seagrass Conservation Plan (Plan) recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Plan and previous studies (Montagna et al. 1998) have identified propeller scarring as a factor in seagrass destruction. This conclusion mirrored findings in Florida, where prop-scarring is a major environmental concern; and the Plan's management options reflected management actions that Florida had successfully implemented to prevent scarring (Sargent et al. 1995, Ehringer and Anderson 2002, Stowers et al. 2002). Florida has enacted mandatory measures to prevent propeller scarring of seagrasses in its bays and estuaries.

TPWD created the RBSSA by rule in 2000 to study seagrass resources and protect them from the effects of boat propellers. The rule TPWD adopted for the RBSSA in 2000 focused on education and voluntary compliance as the principal means of protecting seagrass resources. Unfortunately, despite extensive and costly efforts by TPWD over the past five years, the voluntary approach proved ineffective.

The proposed amendment to §57.921 consisted of two different, but complementary, regulatory approaches to conserve seagrasses within the RBSSA. Of the two, only one was adopted during the November 3, 2005 meeting of the Texas Parks and Wildlife Commission. The approach that was adopted (proposed §57.921(d) - (e)) prohibits the uprooting of seagrasses throughout the entire area of the RBSSA by submerged propellers, and defines "seagrass plant" to include the five species prevalent within the RBSSA. Further, the rule as adopted clarifies that it is not a violation to operate an electric trolling motor or anchor a vessel within the RBSSA. The rule as adopted also expands the list of purposes for which signs may be placed in RBSSA to include signs that mark special zones within the area. The rule as adopted prohibits the uprooting or digging out of seagrasses by submerged propeller except as allowed under a GLO coastal lease, or as may result from: (1) using an electric trolling motor, (2) anchoring a vessel within the area, or (3) other activities permitted under state law. The prohibition would apply throughout the entire RBSSA (32,144 acres) starting May 1, 2006.

In summary, TPWD in 2000, after extensive research into the issues surrounding seagrass resources in Texas, complied with the "Seagrass Conservation Plan in Texas" by establishing the

RBSSA and using a voluntary approach to the protection of seagrass in the area. Through observation of boaters in the area from TPWD staff it was determined that the voluntary prop-up areas (zones) were not effective in getting boaters to change their behavior. Additionally, bottom scarring is still very visible in the area. The lack of compliance and the inability to see improvement in the area in regards to bottom scarring led the department to consider other options to protect seagrass in the area. This led to the adoption of the current rule which prohibits seagrass uprooting in the RBSSA. Literature Cited Brown-Peterson, N. J., M. S. Peterson, D. L. Nielson, M. D. Murphy, R. G. Taylor, and J. R. Warren. 2002. Reproductive biology of female spotted seatrout in the Gulf of Mexico: differences among estuaries? *Environmental Biology of Fishes* 63:405-415. Ehringer, J. N., J. Anderson. 2002. Seagrass Transplanting and Restoration in Tampa Bay. pages 39-46 in H.S. Greening, ed. *Seagrass Management: It's Not Just Nutrients!* 2000 Aug 22-24; St. Petersburg, FL. Tampa Bay Estuary Program. 246 p. Montagna, P. A., S. A. Holt, C. Ritter, S. Herzka, K. F. Binney, and K. H. Dunton. 1998. Characterization of Anthropogenic and Natural Disturbance on Vegetated and Unvegetated Bay Bottom Bay Bottom Habitats in the CCBNEP study area- CCBNEP-25 Vol. 1. 108pp. Perez-Dominguez, R., and G. J. Holt. 2003. How do diel fluctuations in temperature and dissolved oxygen in seagrass beds affect growth of red drum larvae? *Annual Proceedings of the Texas Chapter of the American Fisheries Society.* page 2. Pulich, W. Jr., C. Blair, and W. A. White. 1997. Current Status and Historical Trends of Seagrass in the Corpus Christi Bay National Estuary Program Study Area. Publication CCBNEP-20. 71pp. Sargent, F. J., T. J. Leary, D. W. Crewz, and C. R. Kruer. 1995. Scaring of Florida's seagrasses: assessment and management options. Florida Department of Environmental Protection. FMRI Technical Report TR-1. 66pp. Stowers, J. F., E. Fehrmann, A. Squires. 2002. Seagrass scarring in Tampa Bay: impact analysis and management options. pages 47-54 in H.S. Greening, ed. *Seagrass Management: It's Not Just Nutrients!* 2000 Aug 22-24; St. Petersburg, FL. Tampa Bay Estuary Program. 246 p. Stunz, G. W., T. J. Minello, and P. S. Levin. 2003. Selection of estuarine nursery habitats by wild-caught and hatchery-reared juvenile red drum. *Annual Proceedings of the Texas Chapter of the American Fisheries Society.* page 1. TPWD Publication. 1999. The Seagrass Conservation Plan for Texas. PWD BK R0400-041. 84pp.

Comments made by the public concerning the proposed rules were presented to the Texas Parks and Wildlife Commission (TPWC). Three public hearings were held October 19 and 20, 2005 in addition to the hearing at the TPWC meeting on November 3, 2005. The department received comments from the following coastal organizations that were in support of the proposal: Port Aransas Boatmen, Inc., and the Coastal Bend Guides Association. The department received comments from the following coastal organizations that opposed the proposal: Recreational Fishing Alliance, Save Cedar Bayou, The Port of Corpus Christi Authority, and City By The Seas Property Owner's Association. The department received comments from the following coastal organizations that opposed the "no-prop zones," but supported the other portions of the proposal: Coastal Conservation Association of Texas, and the Rockport Chamber of Commerce. The department received a total of 232 comments on the proposed regulations which include the organization comments listed above. Each comment category was totaled individually even when a single individual may have commented on more than one category (e.g., a single individual may have been accounted for in 3 separate comment

categories). However, most of the comments received only addressed a portion of the proposal package. Of those that addressed the complete regulation package 43 were in support of the complete proposal and 42 expressed that there was no need for the regulations. Additionally, 10 supported only the seagrass and damage definitions while 41 disagreed with that portion of the proposal. The "no-prop zone" portion of the proposal received 70 comments in support and 26 disagreed.

Of the 109 that opposed all or part of the proposal, 53 did not elaborate upon their opposition or give alternatives to the published proposals. The agency's response to general, non-specific opposition to the rule as proposed has been addressed earlier in this preamble and is summarized as: TPWD disagrees with the comments, continues to see the need for protection of seagrass in the RBSSA, and sees the rules as adopted (which prohibit uprooting of seagrass in the area) as a reasonable approach to protecting seagrass while continuing to allow the greatest access to the area.

Of the 109 that opposed all or part of the proposal, 56 offered a specific reason or reasons for their opposition. Those comments and the agency's response follow.

COMMENT: Seventeen persons opposed adoption of the rules, stating that the destruction of seagrass in RBSSA was primarily because the department failed to conduct an adequate education program for boaters and fishermen in the area.

AGENCY RESPONSE: The agency disagrees and responds that the education program for boaters and fishermen is ongoing and will always be an important aspect of the efforts to protect seagrass. Throughout the history of the RBSSA many educational efforts have been undertaken. Signage on the water and at key boat ramps was established and maintained as a key educational tool. A boating video was produced and many groups were contacted and given various educational materials regarding the need for protection of seagrass in the RBSSA. The continued accumulation of prop-scars within RBSSA suggests that regardless of the form taken by the education program, individuals continued to ignore the conservation needs of the seagrass meadows. The voluntary aspect of the program was not working. The department agrees to work with organizations within the community to enhance existing education programs and develop new ones. No changes were made as a result of these comments.

COMMENT: Twelve persons opposed adoption of the rules, stating that the destruction of seagrass in RBSSA was primarily because the department failed to maintain adequate signage for boaters and fishermen in the area.

AGENCY RESPONSE: The agency disagrees and responds that damage to seagrass is not related to how well a no-prop zone was marked. Early in the history of RBSSA considerable effort and expense was expended to provide and maintain signage on the voluntary no-prop zones within the area. However, Beau Hardegree (formerly with TPWD) currently with U. S. Fish & Wildlife Service, unpublished data) found that there was no compliance with the voluntary no-prop zones where there was adequate signage regardless of the zone (n=212 vessels observed). Nonetheless, the department intends to work with organizations within the community to improve signage warning the public of shallow water where seagrass meadows are most vulnerable. No changes were made as a result of these comments.

COMMENT: Two persons opposed adoption of the rules, stating that a mandatory boating license should be required of anyone operating a vessel in Texas waters and that license should require a minimum of 8 hours of educational programs about boating safety and the vulnerability of seagrass meadows in shallow water.

AGENCY RESPONSE: The agency disagrees and responds that damage to seagrass is a concern of the department and the focus of these rules. However, regulation of boating licensing and safety is outside the scope of authority provided in Parks and Wildlife Code, Chapter 81, Subchapter F, which is related to the creation and regulation of State Scientific Areas and, thus, falls outside the scope of these rules. No changes were made as a result of these comments.

COMMENT: Two persons opposed adoption of the rules, stating that the department inadequately studied the problem and used inadequate science in concluding that action was needed.

AGENCY RESPONSE: The agency disagrees and responds that in January 1999, TPWD, GLO, and TCEQ published 'The Seagrass Conservation Plan for Texas' (TPWD 1999). The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. In addition, the plan cited many studies that have been conducted that demonstrate extent and severity of seagrass damage from submerged propellers, and the difficulty and expense of attempting to restore propeller damaged seagrass. In addition, the department evaluated numerous studies that have concluded that seagrass meadows play a critical role in the coastal environment, including nursery habitat for estuarine fisheries, as a major source of organic biomass for coastal food webs, effective agents for stabilizing coastal erosion and sedimentation, and major biological agents in nutrient cycling and water quality processes. And finally, the continued damage to seagrass in the RBSSA area and the lack of compliance among boaters were documented after the initial rule was passed in 2000. No changes were made as a result of these comments.

COMMENT: One individual opposed adoption of the rules, stating that the department inadequately studied the problem and that the shuffling feet of wade fishermen produced as much damage to seagrass meadows as did submerged propellers.

AGENCY RESPONSE: The agency disagrees and responds that in January 1999, TPWD, the GLO and TCEQ published 'The Seagrass Conservation Plan for Texas' (TPWD 1999). The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. In addition, the plan cited many studies that have been conducted that demonstrate extent and severity of seagrass damage from submerged propellers, and the difficulty and expense of attempting to restore propeller damaged seagrass. In addition, the continued damage to seagrass in the RBSSA area and the lack of compliance among boaters were documented after the initial rule was passed in 2000. No changes were made as a result of these comments.

COMMENT: One individual opposed adoption of the rules, stating that the department inadequately studied the problem and that jet skis sucking grass into their intakes when running in shal-

low water produced as much damage to seagrass meadows as did submerged propellers.

AGENCY RESPONSE: The agency disagrees and responds that in January 1999, TPWD, the GLO and TCEQ published 'The Seagrass Conservation Plan for Texas' (TPWD 1999). The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. In addition, the plan cited many studies that have been conducted that demonstrate extent and severity of seagrass damage from submerged propellers, and the difficulty and expense of attempting to restore propeller damaged seagrass. In addition, the continued damage to seagrass in the RBSSA area and the lack of compliance among boaters were documented after the initial rule was passed in 2000. No changes were made as a result of these comments.

COMMENT: One individual opposed adoption of the rules, stating that the department inadequately studied the problem and that this approach had been tried elsewhere and it did not produce the desired results.

AGENCY RESPONSE: The agency disagrees and responds that in January 1999, TPWD, the GLO and TCEQ published 'The Seagrass Conservation Plan for Texas' (TPWD 1999). The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. In addition, the plan cited many studies that have been conducted that demonstrate extent and severity of seagrass damage from submerged propellers, and the difficulty and expense of attempting to restore propeller damaged seagrass. The conclusion that propeller scarring is a factor in seagrass destruction mirrored findings in Florida, where prop-scarring is a major environmental concern; and the Plan's management options reflected management actions that Florida had successfully implemented to prevent scarring (Sargent et al. 1995, Ehringer and Anderson 2002, Stowers et al. 2002). And finally, the continued damage to seagrass in the RBSSA area and the lack of compliance among boaters were documented after the initial rule was passed in 2000. No changes were made as a result of these comments.

COMMENT: One individual opposed adoption of the rules, stating that lower fishing limits and closed seasons should be used to reduce boating traffic in the area.

AGENCY RESPONSE: The agency disagrees and responds that PWC Chapter 61 directs the Commission to provide reasonable and equitable access to wildlife resources and to deal effectively with changing conditions to prevent depletion or waste. In this chapter, "Waste" means the failure to provide for the regulated harvest of surplus wildlife resources when that harvest would allow, promote, or optimize a healthy and self-sustaining population of a species. The agency believes that damage to seagrass meadows is the result of the way vessels are operated in RBSSA and can be addressed without reducing bag limits and closing seasons. If the bag limits in the area were reduced and it resulted in fewer people fishing in the area, there would be economic losses to the local economy that would not be justified based on protection of seagrass or based on the biological productivity of fish in the area. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that instead the department should reduce or stop the dumping of dredge spoil into seagrass meadows.

AGENCY RESPONSE: The agency disagrees and responds that the department does not have the authority to regulate the deposition of spoil. Dredging and deposition of spoil is regulated by the U. S. Corps of Engineers (CORPS) under the Rivers and Harbors Act and under section 404 of the Clean Water Act, and by the GLO (i.e., which is the owner of the bay bottom), or, in certain bays and channels, a navigational district or harbor/port authority who owns the bottom in lieu of the GLO. TPWD's role in the process is only to review and comment on permits issued by the CORPS. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that regulations should be promulgated for a much smaller area than RBSSA.

AGENCY RESPONSE: The agency disagrees and responds that seagrass meadows exist in discontinuous patches along the whole Texas coast. The management strategy protects seagrass throughout the entire RBSSA which constitutes the largest concentration of this type of marine habitat found anywhere along the coast. Through protecting the larger area of the RBSSA the rule will also protect smaller more concentrated patches of seagrass within the RBSSA. The department responds that protecting only a small portion of the area would be inadequate and inappropriate when concern is for the meadows of the whole area. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that the public was inadequately notified to develop and make comments on the proposals.

AGENCY RESPONSE: The agency disagrees and responds that discussions in the area predate the publication of the "The Seagrass Conservation Plan" (TPWD 1999) and the establishment of the RBSSA in 2000. The results of the information gathered from 2000 until now were scoped with stakeholders in the area beginning April 2005 and with the Seagrass Advisory Committee in May 18, 2005. Additionally, the proposal was publicly presented to the Regulations Committee August 24, 2005, published in the *Texas Register* September 20, 2005, and distributed through a news release September 26, 2005 describing the proposals and notifying the public of Public Hearings to be held in San Antonio, Rockport, and Corpus Christi. The news release further gave contact names and other alternative ways in which the public could comment on the proposals. The fact that 232 comments were made suggests that there was adequate notification of the proposed action. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that regulations prohibiting uprooting of seagrass plants would force fishermen to use only jet skis and air boats.

AGENCY RESPONSE: The agency disagrees and responds that the intent of the regulation is aimed at propeller driven vessels that run in water too shallow for their draft and uproot seagrass plants as a result. While one way of avoiding such uprooting would be to use a jet ski or air boat, it certainly isn't the only way. Use of deep water channels within seagrass meadows as run lanes; drifting, poling, or trolling with an electric trolling motor between deep water channels; and tilting a motor to prevent contact with the bottom are all proven methods of

avoiding uprooting of seagrass without needing to resort to using jet skis or air boats. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that regulations prohibiting uprooting of seagrass plants would require certain disabled individuals to buy specialized equipment in order to navigate the RBSSA.

AGENCY RESPONSE: The agency disagrees and responds that the intent of the regulation is aimed at propeller driven vessels that run in water too shallow for their draft and uproot seagrass plants as a result. Use of deep water channels within seagrass meadows as run lanes; drifting, poling, or trolling with an electric trolling motor between deep water channels; and tilting a motor to prevent contact with the bottom are all proven methods of avoiding uprooting of seagrass. This is true regardless of whether a fisherman had a disability or not. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that regulations prohibiting uprooting of seagrass plants were not needed because there was more seagrass now than there ever had been.

AGENCY RESPONSE: The agency disagrees and responds that in January 1999, TPWD, the GLO and TCEQ published 'The Seagrass Conservation Plan for Texas' (TPWD 2000). The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. In addition, the plan cited many studies that have been conducted that demonstrate extent and severity of seagrass damage from submerged propellers, and the difficulty and expense of attempting to restore propeller damaged seagrass. The fact that propeller scarring is accumulating, means that there is more exposed bottom without seagrass so that there cannot be, therefore, more seagrass than there was before there was propeller scarring. No changes were made as a result of this comment.

COMMENT: One individual opposed adoption of the rules, stating that the department inadequately studied the problem and that if staff would inspect seagrass meadows at night they would find them full of fish.

AGENCY RESPONSE: The agency disagrees and responds that in January 1999, TPWD, the GLO and TCEQ published 'The Seagrass Conservation Plan for Texas' (TPWD 1999). The Seagrass Conservation Plan recommends that these three agencies take measures within their jurisdictions to conserve this critical coastal resource. The Seagrass Conservation Plan identified propeller scarring as a factor in seagrass destruction. In addition, the department evaluated numerous studies that have concluded that seagrass meadows play a critical role in the coastal environment, including nursery habitat for estuarine fisheries, as a major source of organic biomass for coastal food webs, effective agents for stabilizing coastal erosion and sedimentation, and major biological agents in nutrient cycling and water quality processes. And finally, the continued damage to seagrass in the RBSSA area and the lack of compliance among boaters were documented after the initial rule was passed in 2000. There is no dispute that seagrass meadows are important to marine life and that fish would be expected to use these areas. The issue is the damage done to these

seagrass meadows from submerged propellers. No changes were made as a result of these comments.

COMMENT: One individual representing the Port of Corpus Christi Authority (PCCA) opposed adoption of the rules, stating that land belonging to PCCA had been inappropriately included in RBSSA and should be removed from the regulation.

AGENCY RESPONSE: The agency agrees and responds that the department was unaware that (a) the land in question belonged to the PCCA; (b) that PCCA would be opposed to protecting seagrass meadows on their property; or that (c) the designation of RBSSA in anyway inhibited any other use of the land to PCCA. PCCA did not comment on the 2000 proposal or the renewal proposal of RBSSA in 2005, both of which included this submerged land. In response to the comment, the coordinates on the south boundary of RBSSA have been amended to exclude this land.

COMMENT: One individual opposed adoption of the "general definitions" portion of the rules, stating that regulations prohibiting uprooting of seagrass plants were too vague and needed to include "submerged propeller" to clarify specifically what was prohibited.

AGENCY RESPONSE: The agency agrees and responds that the intent of the regulation is aimed at propeller driven vessels that run in water too shallow for their draft and uproot seagrass plants as a result. Language was added to exempt trolling motors and anchoring, and to specifically identify damage done by a "submerged propeller" as the focus of the prohibitions as a result of this comment.

COMMENT: One individual opposed adoption of the "general definitions" portion of the rules, stating that regulations prohibiting uprooting of seagrass plants were too vague and would prevent vessel operators from anchoring in the RBSSA.

AGENCY RESPONSE: The agency agrees and responds that the intent of the regulation is aimed at propeller driven vessels that run in water too shallow for their draft and uproot seagrass plants as a result. Language was added to exempt trolling motors and anchoring, and to specifically identify damage done by a "submerged propeller" as the focus of the prohibitions as a result of this comment.

COMMENT: Nine individuals opposed adoption of the "no-prop zones" portion of the rules, while stating various reasons why they should not be implemented.

AGENCY RESPONSE: The "no-prop zones" were not adopted by the TPWC.

The amendment is adopted under Parks and Wildlife Code, §81.501, which authorizes the commission to create state scientific areas for the purposes of education, scientific research, and preservation of flora and fauna of scientific or educational value, §81.502(c), which authorizes adoption of rules and regulations necessary for the management and protection of scientific areas, and Chapter 13, Subchapter B, which authorizes the commission to adopt regulations governing state scientific areas.

§57.921. *Redfish Bay State Scientific Area.*

(a) Purpose: The Redfish Bay State Scientific Area is established for the purpose of education, scientific research, and preservation of flora and fauna of scientific or educational value.

(b) Term: July 1, 2005 through June 30, 2010.

(c) Boundaries:

(1) 27 59.538N; 097 3.858W (Northern extremity of island forming northern boundary of Estes Cove);

(2) 27 59.232N; 097 4.434W (Intersection of Gulf Intra-coastal Waterway (GIWW) and Mouth of Cove Harbor);

(3) 27 55.986N; 097 6.804W (GIWW at Rocky Ridge);

(4) 27 53.880N; 097 8.088W (intersection of GIWW and Aransas Pass Shrimp Boat Channel);

(5) 27 53.058N; 097 8.502W (Intersection of GIWW and Brown and Root Channel);

(6) 27 52.32N; 097 9.486W (Intersection of GIWW and mouth of Redfish Bay Terminal);

(7) 27 49.483N; 097 11.255W (A point near the southern extremity of Dagger Island where the Corpus Christi Ship Channel and the GIWW intersect);

(8) 27 50.489N; 097 6.619W (A point north of the southwest arm of Harbor Island);

(9) 27 50.613N; 097 6.614W (A point northwest of the previous point, north of the southwest arm of Harbor Island);

(10) 27 50.860N; 097 5.315W (A point north of the southeast portion of Harbor Island);

(11) 27 50.439N; 097 4.841W (A point in the Corpus Christi Channel southeast of Harbor Island);

(12) 27 50.745 N; 097 3.66 W (A point on Harbor Island at the intersection of Aransas Shrimp Boat Channel and Corpus Christi Ship Channel);

(13) 27 52.420 N; 097 2.470 W (A point in Lydia Ann Channel);

(14) 27 55.020 N; 097 03.460 W (East of the mouth of Corpus Christi Bayou).

(d) No person may move, remove, deface, alter, or destroy any sign, depth marker or other informational signage placed by the department to delineate boundaries of the Redfish Bay State Scientific Area or to designate specific zones within the area.

(e) This subsection is effective May 1, 2006.

(1) In this section, "seagrass plant" means individuals from the following marine flowering plant species: Clover Grass (*Halophila engelmanni*), Manatee Grass (*Syringodium filiformis*), Shoalgrass (*Halodule beaudettei*), Turtle Grass (*Thalassia testudinum*), and Widgeon Grass (*Ruppia maritima*).

(2) Within the Redfish Bay State Scientific Area, no person shall cause or allow any rooted seagrass plant to be uprooted or dug out from the bay bottom by a submerged propeller, except as may be permitted by a coastal lease issued by the Texas General Land Office or otherwise permitted under state law.

(3) Notwithstanding paragraph (2) of this subsection, it is not a violation to:

(A) anchor a vessel within the Redfish Bay State Scientific Area; or

(B) use electric trolling motors within the Redfish Bay State Scientific Area.

(f) The penalty for violation of this section is prescribed by Parks and Wildlife Code, §13.112.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2006.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: April 6, 2006

Proposal publication date: September 30, 2005

For further information, please call: (512) 389-4775



CHAPTER 59. PARKS

SUBCHAPTER E. OPERATION AND LEASING OF PARK CONCESSIONS

31 TAC §§59.104, 59.105, 59.108

The Texas Parks and Wildlife Commission adopts amendments to §§59.104, 59.105, and 59.108, concerning operating and leasing of park concessions, without changes to the proposed text as published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8417).

The amendment to §59.104, concerning Types of Concession Contracts, which expands the description of revocable temporary contracts, is necessary to allow the department to test the feasibility of some new services before they are incorporated into a park's regular program. The current rule authorizes the department to enter into a revocable temporary contract when necessary to take immediate action to continue services or provide interim services. The expanded description also allows the department to enter into a temporary revocable contract in order to test a new service. Determining visitor support prior to entering into a longer-term contractual agreement is an efficient practice for both TPWD and the prospective concessionaire.

The amendment to §59.105, concerning Contract Terms, allows the department to stipulate a contract length within a range of six to eighteen months. The current rule requires all revocable temporary contracts to be six months in length. The amendment is necessary to allow staff the opportunity to perform more thorough critical examinations of new and untested services. A calendar year or longer is usually required to examine customer reaction and support during seasonal visitation fluctuations.

The amendment to §59.108, concerning Bond and Insurance, eliminates reference to the minimum amount of liability insurance required of concessionaires. The current rule requires a concessionaire to carry a minimum of \$300,000 in liability insurance. The department contracts with private service providers under the concessions program to offer a variety of park activities, with varying degrees of associated risk. The nature of these activities and the related competency skill required to perform the activities directly relate to the degree of risk. The amendment is necessary to ensure that the amount of liability coverage required of concessionaires is commensurate with the associated risk (i.e., lower coverage required for minimal risk activities and greater coverage required for higher risk activities) and to avoid potential confusion. A regulatory requirement for a specific amount of liability coverage can be misleading to prospective concessionaires.

The amendment to §59.104 will function by authorizing the department to enter into a revocable temporary contract with a prospective concessionaire in order to evaluate a product or service.

The amendment to §59.105 will function by authorizing the department to stipulate a contract length within a range of six to eighteen months.

The amendment to §59.108 will function by allowing the department to require a concessionaire to carry liability insurance commensurate with the associated risk.

The department received no comments opposing adoption of the proposed amendments.

The department received six comments supporting adoption of the proposed amendments.

No associations or groups commented on the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §13.015, which authorizes the Texas Parks and Wildlife Department to grant contracts for operating concessions in state parks and to make regulations governing the granting and operating of concessions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



SUBCHAPTER J. OFF-HIGHWAY VEHICLE TRAIL AND RECREATIONAL AREA PROGRAM

31 TAC §59.231

The Texas Parks and Wildlife Commission adopts new §59.231, concerning the Off-Highway Vehicle Trail and Recreational Area Program, without changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8629).

The new section provides for the definitions and general requirements necessary to administer the Off-Highway Vehicle Trail and Recreational Area Program (OHVTRAP) established by the enactment of Senate Bill 1311 (S.B. 1311) by the 79th Texas Legislature (Regular Session). S.B. 1311 added Chapter 29 and §11.046 and §11.047 to the Texas Parks and Wildlife Code.

Under the provisions of S.B. 1311, the OHVTRAP was established to further the establishment of motor vehicle recreation sites, establish and maintain a public system of trails and other recreational areas for use by owners and riders of off-highway vehicles, improve existing trails and other recreational areas open to the public for use by owners and riders of off-highway

vehicles, and to foster the responsible use of off-highway vehicles.

The rule provides definitions for terms used but not defined in S.B. 1311 ('off-highway motorcycle' and 'public land') and would specify that a valid off-highway vehicle decal be affixed to any off-highway vehicle operated in a recreational area established or maintained by the department under Parks and Wildlife Code, Chapter 29, on other public land, or on land purchased or developed under a grant made under Parks and Wildlife Code, §29.008 or any other grant program operated or administered by the department. The proposed new section also would clarify that possession of the off-highway vehicle decal does not authorize any person to enter public land or use an off-highway vehicle on public land if such entry or use is prohibited, and does not authorize any person to operate an off-highway vehicle on a public roadway.

The definition of 'off-highway motorcycle' is necessary because the term is created but not defined by statute and should be defined for enforcement purposes. S.B. 1311 defines an off-highway vehicle as an "all-terrain vehicle as defined by Transportation Code, §663.001; off-highway motorcycle; or any other four-wheel drive vehicle not registered to be driven on a highway." The definition in proposed §59.231(a) would establish an 'off-highway motorcycle' as any vehicle meeting the definition of a motorcycle under Transportation Code, §502.001(12) that is not registered for use on a public roadway. The definition is consistent with the statutory definition for 'other four-wheel drive vehicles,' in that the key distinction is registration for use on a public roadway. 'Public land' is defined as 'any land on which an off-highway decal is required under Parks and Wildlife Code, §29.003. The amendment is necessary to provide clear meanings for the terminology used in the rule.

The requirement that an off-highway decal be affixed to all off-highway vehicles is necessary because although S.B. 1311 prohibits the operation of off-highway vehicles on public land unless an off-highway vehicle decal has been obtained, it does not create specific display or possession requirements. In order to verify compliance, the rule requires a decal to be affixed to an off-highway vehicle at all times the off-highway vehicle is operated on public land, which the department believes is the easiest and least complicated method of proving compliance.

The clarification concerning the use of an off-highway decal is necessary to make clear that the decal is not a permit and does not make an off-highway vehicle lawful to operate on a public roadway.

In general, the new section will function by providing definitions and general requirements necessary to administer the OHV-TRAP as required under the terms of S.B. 1311.

Specifically, the rule will function by specifying the types of vehicles for which an off-highway vehicle decal must be obtained and displayed for lawful operation in a recreational area established or maintained by the department under Parks and Wildlife Code, Chapter 29, on other public land, or on land purchased or developed under a grant made under Parks and Wildlife Code, §29.008 or any other grant program operated or administered by the department.

The department received two comments opposing adoption of the proposed rule. Those comments, accompanied by the department's response, follow.

One commenter opposed adoption of the proposed rule and stated that an off-road decal should not be required. The department disagrees with the comment and responds that the decal requirement is established by statute and cannot be eliminated or altered by the commission. No changes were made as a result of the comment.

One commenter opposed adoption of the proposed rule and stated that there was no benefit in the decal requirement and therefore it is unnecessary. The commenter also stated that the decal requirement increases the administrative burden of distributing the decals and the record keeping involved. The department disagrees with the comment and responds that the decal requirement is established by statute and cannot be eliminated or altered by the commission. No changes were made as a result of the comment.

The department received 11 comments supporting adoption of the proposed amendment.

No associations or groups commented on the proposed rule.

The new rule is adopted under the authority of Parks and Wildlife Code, §29.010, which authorizes the commission to adopt rules necessary to implement Parks and Wildlife Code, Chapter 29.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200601685

Ann Bright

General Counsel

Texas Parks and Wildlife Department

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For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

34 TAC §25.4

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §25.4, concerning substitute service requirements for TRS membership eligibility as well as for purposes of verification and purchase of substitute service credit. The amended rule includes language redefining a substitute as a person serving on a temporary basis in the place of a current employee. The amended section is adopted without changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8646).

Although §25.4 regards the verification and purchase of substitute service, the definition of a substitute is also included in the rule. The amended rule changes the definition of substitute used in determining whether an employee may be classified as a sub-

stitute and excluded from TRS membership eligibility. Under the amended rule, a substitute is a person who serves on a temporary basis in the place of a current employee. Service in a vacant position is not substitute service. Historically, the unique nature of the substitute employment relationship has been a difficult concept to explain and confusing for both TRS-covered employers and members. Many TRS-covered employers use the titles "long-term substitute" or "permanent substitute" to describe employment arrangements that may not be accurate descriptions for TRS purposes. To minimize the confusion due to conflicting terms, TRS is eliminating the time-frame aspect of temporary employment as a substitute. Under the adopted amendments to the rule, if the person is serving in a position held by a current employee, the length of time the substitute serves in that position is not limited. If the person is serving in a position that is vacant, the employment cannot be characterized as serving as a substitute. If the position is not held by a current employee, the employment may be considered temporary if the TRS-covered employer anticipates that the period of employment will be less than four and 1/2 months. Temporary employment is not eligible for TRS membership. If the TRS-covered employer anticipates that the period of employment will be longer than four and 1/2 months or is for an indefinite period, the employment is eligible for membership in TRS, provided it is at least one-half time. Thus, the amended rule will provide a clear definition of a substitute without the need to contact the substitute on a daily basis.

Finally, the amended section, as adopted, is reformatted from a single implied subsection (a) into seven subsections to make the rule easier to read and apply. The change to the definition of substitute is included in subsection (b) of the amended section and provides that the definition of substitute applies to the entire title, not just the section on the purchase of the service. Accordingly, the amended rule will ensure the consistent application of the definition of substitute for purposes of membership eligibility, verification of service, and purchase of substitute service credit.

TRS received no public comments regarding the proposed amendments.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership and the administration of the funds of the retirement system.

Cross-reference to Statute: §821.001, Government Code, relating to definitions, including definition of "membership service"; §822.001, Government Code, relating to membership requirement; §824.802, Government Code, relating to participation in Deferred Retirement Option Plan (DROP); §825.403 relating to collection of membership contributions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 15, 2006.

TRD-200601671

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438

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SUBCHAPTER G. PURCHASE OF CREDIT FOR OUT-OF-STATE SERVICE

34 TAC §§25.82, 25.84, 25.86

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §25.82 regarding cost of out-of-state service credit, §25.84 relating to crediting fees for out-of-state service credit, and §25.86 relating to computing average compensation. The amended sections are adopted without changes to the text of the proposed rules as published in the January 13, 2006, issue of the *Texas Register* (31 TexReg 276).

Section 823.401, Government Code, now requires cost to be the actuarial present value, at the time of deposit, of the additional benefit attributable to the service credit. However, the current method of calculating cost is preserved if a person was a TRS member on December 31, 2005, and the out-of-state service was performed before January 1, 2006.

The proposed amendments to §25.82 and §25.84 will enable TRS to administer the new cost requirements and to preserve the current cost methodology for those grandfathered under Senate Bill 1691 (2005, 79th Legislature, Regular Session), and to administer other changes under that legislation. The amendments include actuarial factor tables as described in the rule text, which are incorporated by reference into §25.82.

Additionally, amended §25.82 and §25.86 reflect recent amendments to §824.203, Government Code, for computing retirement benefits using a highest five-year salary average instead of a three-year average, unless the member is grandfathered under Senate Bill 1691 to use a three-year salary average. The change affects how salary is calculated for the purpose of the actuarial cost calculation. It also affects the actuarial calculation of the factors themselves. Thus, for a member who is not grandfathered and for whom the service credit purchase does not result in immediate eligibility for unreduced retirement benefits, the cost is 96% of what it otherwise would be. This slightly lower cost reflects the flow-through effect of a five-year salary average on the benefit calculations. The 96% factor is reflected in amended §25.82.

TRS received no public comments regarding the proposed amended sections.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and the transaction of business of the Board.

Cross-reference to Statute: 26 U.S.C. §415, which imposes limitations on certain payments for purchased service credit; §823.006, Government Code, which provides for limits on annual contributions for purchase of service credit; §823.401, Government Code, which provides for the establishment of out-of-state service credit with TRS and authorizes the Board to adopt actuarial rates and tables for the purchase of out-of-state service credit; §824.203, Government Code, which provides for a five year salary average in the computation of a standard service retirement annuity; and §825.410, Government Code, which provides for payment of special service credit on an installment basis.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

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For further information, please call: (512) 542-6438



SUBCHAPTER L. OTHER SPECIAL SERVICE CREDIT

34 TAC §25.161, §25.164

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §25.161 relating to the purchase of work experience service credit and §25.164 relating to the purchase of membership waiting period service credit. The amended sections are adopted without changes to the text of the proposed rules as published in the January 13, 2006, issue of the *Texas Register* (31 TexReg 277).

Senate Bill 1691, 79th Legislature, Regular Session (2005), amended the provisions of the TRS retirement plan to use a five-year salary average, instead of a three-year salary average, for the calculation of benefits. TRS members who are grandfathered would continue to have a three-year salary average.

State law and TRS rules permit an eligible member to purchase up to two years of work experience service credit. The cost is actuarial cost. Section 25.161 sets forth a description of the calculation of actuarial cost. However, because the calculation relies on a three-year salary average, both for determination of the factors and application of the factors to salary average, the proposed amendments to §25.161 provide for the five-year salary average to be used for non-grandfathered members. For a member who is not grandfathered and for whom the purchase of service credit for work experience does not result in immediate eligibility for unreduced retirement benefits, the TRS actuary has determined that the cost is 96% of what it otherwise would be. This slightly lower cost reflects the flow-through effect of a five-year salary average on the benefit calculations.

Further, amended subsection (a) of §25.161 deletes the reference to §823.006, Government Code, because the statute no longer expressly defines "non-qualified permissive service credit." In amended subsection (d) of §25.161, the method of using the table when a member has more than 31 years of service credit is clarified to conform more closely to the tables, which extend to 34 years of service credit instead of only 31 years. Amended subsection (f) of §25.161 clarifies the use of installment agreements in light of Senate Bill 1691, which expressly makes all types of service credit eligible for purchase under the installment law. Amended subsection (g) of §25.161 updates the reference to using work experience service credit to meet eligibility criteria for the retirees' health benefits program, TRS-Care, because Senate Bill 1691 provides that the service credit may be used to meet "Rule of 80" or "thirty years of service credit" eligibility criteria for retirement after September 1, 2005.

State law and TRS rules permit an eligible member to purchase a year of membership waiting period service credit for a school

year in which the member was subject to the waiting period and worked as a TRS member for less than the required length of time to receive a year of membership service credit. The combined service as a member and during the waiting period must be at least the amount of time otherwise required for a year of membership service credit. The cost of membership waiting period service credit is actuarial cost, which the unamended section bases only on a three-year salary average, both for determination of the factors and application of the factors to salary average. The proposed amendments to §25.164 reflect that a five-year salary average should be used for non-grandfathered members and apply the five-year salary average where appropriate. For a member who is not grandfathered and for whom the purchase of service credit for the membership waiting period does not result in immediate eligibility for unreduced retirement benefits, the TRS actuary has determined that the cost is 96% of what it otherwise would be. This slightly lower cost reflects the flow-through effect of a five-year salary average on the benefit calculations.

Further, amended subsection (a) of §25.164 clarifies the period of time in which a membership waiting period was in effect. Amended subsection (f) of §25.164 clarifies the use of installment agreements in light of Senate Bill 1691, which expressly makes all types of service credit eligible for purchase under the installment law. Amended subsection (i) of §25.164 updates the reference to using membership waiting period service credit to meet eligibility criteria for the retirees' health benefits program, TRS-Care, because Senate Bill 1691 provides that the service credit may be used to meet "Rule of 80" or "thirty years of service credit" eligibility criteria for retirement after September 1, 2005.

TRS received no public comments regarding the proposed amended sections.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system and the transaction of business of the Board.

Cross-reference to Statute: 26 U.S.C. §415, which imposes limitations on certain payments for purchased service credit; §822.001, Government Code, which provides for the membership waiting period; §823.006, Government Code, which provides for limits on annual contributions for purchase of service credit; §823.404, Government Code, which provides for work experience service credit; Government Code §823.406, which provides for membership waiting period service credit; §824.203, Government Code, which provides for a five year salary average in the computation of a standard service retirement annuity; §825.410, Government Code, which provides for payment of special service credit on an installment basis; and Chapter 1575, Insurance Code, which defines "retiree" for the purpose of TRS-Care eligibility and describes when purchased service credit may be used to determine TRS-Care eligibility.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200601631

Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438



CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

SUBCHAPTER B. EMPLOYMENT AFTER SERVICE RETIREMENT

34 TAC §31.14

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §31.14, relating to one-half time employment. The amended section is adopted without changes to the proposed text as published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8420).

Section 31.14 establishes the maximum number of hours a retiree employed under the one-half time exception may work without forfeiting an annuity. Because of the threat of imminent danger and the ultimate damage caused by Hurricane Rita, some health care facilities covered by TRS were in need of additional health care workers and requested TRS retirees whom they employed in one-half time positions to work additional hours during the months of September and October 2005. Under the authority of §418.016 of the Texas Government Code, the Texas Governor Rick Perry suspended all rules and regulation that may have inhibited or prevented a prompt response to the threat of Hurricane Rita.

In response to Governor Perry's proclamation regarding the threat of Hurricane Rita and a request from the governor's office for relief for TRS retirees who were needed to work in health care facilities but concerned about loss of their annuities if they worked the additional hours, staff authorized a limited exception to the maximum number of hours a retiree working under the one-half time exception could work without forfeiting an annuity during the months of September and October 2005. The exception was extended through the month of November in response to the renewal of the governor's disaster proclamation. The Board ratified staff's actions by adopting the amended rule on a permanent basis.

The adopted amendments provide that retirees employed in one-half time positions may work additional hours without forfeiting their annuities and limit the exception to only those retirees who retired before September 1, 2005 and are working in health care facilities. The amended rule further restricts the exception to the months of September, October, and November 2005. Amended §31.14 also provides clear and consistent guidance to TRS reporting entities regarding TRS's response to the governor's disaster proclamations and emergency relief request.

TRS received no public comments regarding the proposed amendments.

Statutory Authority: Tex. Gov. Proclamation No. 41-3023 (signed Sept. 20, 2005), 30 Tex. Reg. 6330 (2005), Governor Perry's initial disaster proclamation regarding Hurricane Rita, and Tex. Gov. Proclamation No. 41-3027 (signed Oct. 20, 2005), 30 Tex. Reg. 7799 (2005), the governor's renewal of

the disaster proclamation for Hurricane Rita, both of which require adoption of the amended rule so that TRS may provide clear and consistent guidance to affected retirees and reporting entities regarding the limited exception being granted to the one-half time employment provisions in response to the governor's proclamations and emergency relief request; §418.012, Government Code, which provides that the above-referenced gubernatorial proclamations have the force and effect of state law; §824.601, Government Code, which authorizes the Board to adopt rules necessary to administer Chapter 824, Subchapter G, Government Code, relating to loss of benefits on resumption of service; and §824.602(j), Government Code, which requires the Board to adopt rules defining employment on a "one-half time basis" as an exception to loss of benefits upon resumption of service.

Cross-reference to Statute: Chapter 824, Subchapter G, Government Code, relating to loss of benefits on resumption of service.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438



CHAPTER 53. CERTIFICATION BY COMPANIES OFFERING QUALIFIED INVESTMENT PRODUCTS

34 TAC §53.7

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §53.7 regarding the fee for certification by companies offering qualified investment products under TRS's 403(b) program. The amended section is adopted without changes to the text of the proposed rule as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8827).

The amendments to §53.7 reduce the fee for certification by a company offering qualified 403(b) plan investment products from \$5,000 to \$3,000. The fee of \$5,000 is the maximum allowed by state law. The fee was originally established at this level to ensure that TRS could pay for all administrative costs of the certification program, including all start-up costs, staffing, and allocation of overhead expenses. However, TRS anticipates that the lower fee of \$3,000 will be sufficient to cover administrative costs on a going-forward basis. The new fee level will apply to companies certifying after the effective date of the rule amendment.

TRS received only one public comment regarding the proposed amended section. The Texas Department of Insurance complimented TRS for the apparent efficiency that TRS has achieved in administering the 403(b) program.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of funds of the retirement system and the transaction of business of the Board, and art. 6228a-5, Tex. Rev. Civ. Stat. Ann., §§6 and 7, which authorize the Board to adopt rules to administer the statutory provisions relating to certification of companies offering qualified investment products and to collect a fee for certification or recertification by a company.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT OFFICER STANDARDS AND EDUCATION

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code §211.1, Definitions. This adoption is without changes to the proposed text as published in the January 27, 2006, issue of the *Texas Register* (31 TexReg 459) and will not be republished.

Adopted amendments to §211.1, Definitions were made by amending the definitions of: academic program, accredited college or university, basic licensing course, firearms, field training program, high school diploma, patrol rifle, rifle, Texas peace officer, training coordinator and training hours for clarification. The following definitions were added for clarification: expiration of license, honorable discharge, precision rifle and resigned/terminated. Subsection (b) is amended to reflect the effective date for these changes.

Comments were received from a Dickens County Correctional Center training director regarding the definition of (a)(44) patrol rifle and (a)(48) precision rifle in which both definitions appear to describe the same thing. Optical enhancing sighting in (a)(44) is synonymous with the term magnified sights in (a)(48). He commented that the differences between a patrol rifle and precision rifle are the intended purposes for which a particular rifle is to be used and the intensity of the training the individual officer who is to utilize the weapon will undergo. He further added a rifle is only as precise as the individual shooter is capable of making it with the same degree of skill, care and caution. He also in agreement that the definition "rifle" was deleted. No changes were made to the rule as a result of the comments.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code §1701.001, Definitions.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200601605

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: June 1, 2006

Proposal publication date: January 27, 2006

For further information, please call: (512) 936-7717



37 TAC §211.27

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code §211.27, Reporting Responsibilities of Individuals. This adoption is without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 84) and will not be republished.

Adopted amendments to §211.27, Reporting Responsibilities of Individuals were made by amending subsection (d) to add language that would require a licensee to report a home of record address or address change to the Commission. Subsection (e) is added to reflect the effective date for these changes.

No comments were received.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code §1701.202, Complaints.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200601606

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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For further information, please call: (512) 936-7717



37 TAC §211.29

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code by amending §211.29, Responsibilities of Agency Chief Administrators. This adoption is without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 85) and will not be republished.

Adopted amendment to subsections (c), (f), (g), and (h) are amended to be consistent with the new language in the Texas Occupations Code §1701.452. Subsection (h) is amended to require that chief administrators notify the Commission of any changes to name, physical location, mailing address, electronic mail address, or telephone number. Subsection (i) is amended to reflect the effective date for these changes.

No comments were received.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code §1701.452, Employment Termination Report, and §1701.153, Reports From Agencies and Schools.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200601607

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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For further information, please call: (512) 936-7717



37 TAC §211.31

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code by amending §211.31, Memorandum of Understanding on Continuity of Care. This adoption is without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 86) and will not be republished.

Adopted amendment §211.31, Memorandum of Understanding on Continuity of Care were made for a name change for one of the agencies that work under this memorandum of understanding. Prior to January 2005, this agency was named The Texas Council on Offenders with Mental Impairments. During the 78th legislature, the mission of this agency was broadened, thus the name change to The Texas Correctional Office on Offenders with Mental and Medical Impairments. Subsection (b) is amended to reflect the effective date for these changes.

No comments were received.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code §1701.404, Memorandum of Understanding on Continuity of Care.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200601608

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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For further information, please call: (512) 936-7717



CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.1, Licensing of Training Providers. The amendment is adopted without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 86) and will not be republished.

The adopted amendment to §215.1, Licensing of Training Providers, changed subsections (a)(3) and (b)(3) to be consistent with definition changes and to licensing of training providers. Subsection (d) is amended to reflect the effective date for these changes.

No comments were received regarding the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The amendment as adopted is in compliance with Texas Occupations Code §1701.251, Training Programs; Instructors.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200601609

Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7717



37 TAC §215.5

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.5, Contractual Training. The amendment is adopted without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 87) and will not be republished.

The adopted amendment to §215.5, Contractual Training, changed subsection (f)(6) to reflect adopted amendments to §211.1(a)(60) and §215.9. Subsection (i) is amended to reflect the effective date for these changes.

No comments were received regarding the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The amendment as adopted is in compliance with Texas Occupations Code §1701.251, Training Programs; Instructors.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200601610
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7717



37 TAC §215.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.7, Training Provider Advisory Board. The amendment is adopted without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 87) and will not be republished.

The adopted amendment to §215.7, Training Provider Advisory Board, changed subsection (a) to add the Texas Occupations Code, §1701.252 for clarification. The amendment to subsection (b) is made to provide reference to §1701.052, Texas Occupations Code establishing the criteria for public members of an advisory board. Subsection (l) is amended to reflect the effective date for these changes.

One comment was received from the Chief of Police, Tyler Police Department, who requested that §215.7(c) add the language "or appointed by the agency head." He feels that as an administrator and agency head he should be able appoint or have a say in who the chairman is. He compares this to the Governor who appoints the Presiding Officer for the Commission. The board sets its own rules of procedure. No changes were made to the rule as a result of the comment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The amendment as adopted is in compliance with Texas Occupations Code §1701.252, Program and School Requirements; Advisory Board.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200601611
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7717



37 TAC §215.11

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.11, Training Provider Evaluations. The amendment is adopted without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 88) and will not be republished.

The adopted amendment to §215.11, Training Provider Evaluations, changed subsections (c) and (d)(6) for clarification on Training Provider Evaluations in order to better delineate the intent of the rule. Subsection (e) is amended to reflect the effective date for these changes.

No comments were received regarding the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The amendment as adopted is in compliance with Texas Occupations Code §1701.254, Training Provider Evaluations.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200601612

Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
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For further information, please call: (512) 936-7717



37 TAC §215.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.15, Enrollment Standards and Training Credit. The amendment is adopted without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 89) and will not be republished.

The adopted amendment to §215.15, Enrollment Standards and Training Credit, was made to clarify the intent of the rule by correcting grammar and delineating enrollment standards and training credit. Subsection (d) is amended to reflect the effective date for these changes.

No comments were received regarding the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The amendment as adopted is in compliance with Texas Occupations Code §1701.255, Enrollment Qualifications.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Timothy A. Braaten
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For further information, please call: (512) 936-7717



37 TAC §215.17

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to §215.17, Distance Education. The amendment is adopted without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 90) and will not be republished.

The adopted amendment to §215.17, Distance Education, were made to subsection (e) to make grammatical changes that will provide clarification with regard to distance education. Subsection (f) is amended to reflect the effective date for this change.

No comments were received regarding the amendment.

The amendment is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The amendment as adopted is in compliance with Texas Occupations Code §1701.251, Training Programs; Instructors.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601614
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: June 1, 2006
Proposal publication date: January 6, 2006
For further information, please call: (512) 936-7717



CHAPTER 217. LICENSING REQUIREMENTS

37 TAC §217.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code §217.1, Minimum Standards for Initial Licensure. This adoption is without changes to the proposed text as published in the January 27, 2006, issue of the *Texas Register* (31 TexReg 461) and will not be republished.

Adopted amendments to §217.1, Minimum Standards for Initial Licensure, were made to subsection (a)(11) to correct name of Texas Medical Board from Texas State Board of Medical Examiners. An amendment to subsection (g)(4). Subsection (o) is amended to reflect the effective date for these changes.

Comments were received from a captain of the administration division, Missouri City Police Department who suggested that the word "have" be removed §217.1(a)(4)(A). Another comment was received from a facility training director, Dickens County Correctional Center, who suggest a change to §217.1(a)(4) and (a)(6) to read as "has never been" instead of (a)(4) "has not ever have been" and (a)(6) "has not ever been". No changes were made to the rule as a result of the comments; however, the Commission will take this comment into consideration at the next comprehensive review.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code §1701.304, Examination.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601615
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: June 1, 2006
Proposal publication date: January 27, 2006
For further information, please call: (512) 936-7717



37 TAC §217.7

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code by amending §217.7, Reporting the Appointment and Termination of a Licensee. This adoption is without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 91) and will not be republished.

Adopted amendments to §217.7, Reporting the Appointment and Termination of a Licensee, were made to subsections (a), (b), and (g) of this section are a result of amendments to the Texas Occupations Code, §1701.451, Pre-employment Request for Employment Termination Report and Submission of Background Check Confirmation Form, §1701.452, Employment Termination Report, and §1701.4525 Request for Correction of Report; Administrative Penalty; Hearing; Appeal. These changes require chief administrators to request records from the Commission as part of the background check confirmation, to include F-5 documentation. These changes also require chief administrators of a law enforcement agency to document an explanation of circumstances on the F-5 form. This new legislation action allows an appeal process to a licensee who may contest the reasons for termination and/or resignation stated on the F-5. Subsection (i) is amended to reflect the effective date for these changes.

Comments were received from a captain of the administration division, Missouri City Police Department, who suggest that the wording in §217.7(d) be changed or deleted entirely. The current wording suggests a licensee with an expired license can be appointed as long as the individual meets the current minimum standards for licensure. An individual would have to attain compliance and have the license reinstated to be appointed with an agency. Another comment was received from a facility training director, Dickens County Correctional Center, who feels that §217.7(g) language is confusion and should be changed. He also suggests a change in wording for proper grammatical use of a pronoun and its antecedent in agreement for number, gender and person. No changes were made to the rule as a result of the comments.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code §1701.451, Pre-employment Request for Employment Termination Report, and Submission of Background Check Confirmation Form.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601618
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: June 1, 2006
Proposal publication date: January 6, 2006
For further information, please call: (512) 936-7717



37 TAC §217.8

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code by adding new §217.8, Contesting an Employment Termination Report. This adoption is without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 92) and will not be republished.

Adopted new §217.8, Contesting an Employment Termination Report was added in accordance with Texas Occupations Code §1701.452. This new section adds requirements, responsibilities, and liability for chief administrators to properly document the reason for the departure of a licensee on the F-5 form. This section allows for an appeal process for licensees who disagree with the reasons documented on their respective F-5.

Comments were received by the general counsel for the Texas Department of Public Safety (Texas DPS) who does not agree that the process coincides with the mandate found in the Texas Occupations Code §1701.4525. The rule allows a matter to be heard by the State Office of Administrative Hearings (SOAH) via a referral from the executive director even if neither the person contesting the report nor the reporting agency has asked for a hearing. The statute does not appear to give the executive director authority to refer a dispute directly to SOAH. It appears that the statute requires the Commission to issue a ruling, either an order to correct the report or a notice of refusal to order a correction. The statute indicates that it is then that the law enforcement agency or the person requesting the correction can choose to have the matter heard before SOAH. Also since there may be situations where the parties are satisfied with the Commission's ruling, a contested case hearing would not be necessary. The general counsel for Texas DPS believes that determination of the parties at hearing would then depend upon that initial ruling, as opposed to a referral to SOAH without ruling and causing three parties to appear. The Texas DPS general counsel envisions two-party hearings involving the Commission vs. the reporting agency and/or the Commission vs. the person contesting the report. In §217.8(e) the Texas DPS general counsel does not believe that the person contesting the report will always be a party to a contested case before SOAH and so could not always have the burden of proof. In the event that the Commission refuses to order a correction, subsection (e) would be appropriate. However, in a situation where the Commission has ordered a correction and the agency requests a hearing before SOAH, the burden of proof should be placed upon the Commission to show why a change from the agency's initial action is necessary. This new rule creates no deadline for requesting a

contested case hearing after an order or refusal is issued by the Commission. In the interest of closure for all parties involved, a deadline should be included. Although not addressed in the rule it is assumed that the Commission would provide agencies with a copy of the Commission's ruling and a notice of hearing. It is also assumed that the Commission will handle all docketing of cases with SOAH. No changes were made to the rule as a result of the comments.

This section is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule as adopted is in compliance with Texas Occupations Code §1701.4525, Request for Correction of Report; Administrative Penalty; Hearing; Appeal.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601619

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: June 1, 2006

Proposal publication date: January 6, 2006

For further information, please call: (512) 936-7717



37 TAC §217.9

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code by amending §217.9, Continuing Education Credit for Licensees. This adoption is with changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 93).

A change to §217.9(a)(8) was filed incorrectly as "taken two or more times" when it should have read "taken more than two times" within one training unit. This change is non-substantial.

Adopted amendments to §217.9, Continuing Education Credit for Licensees, were made to subsection (b) is amended to include new paragraph (7) the Peace Officers System for Education and Internet Training (POSEIT) to the list of items for which credit may be refused if the course has been completed within the current training unit. Additionally, subsection (b) is amended by adding new paragraph (8) that includes any distance education course to the list of items that may be refused credit if the item has been completed within the current training unit. Subsection (d) is amended to reflect the effective date for these changes.

No comments were received.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code §1701.351, Continuing Education Required for Peace Officers.

No other code, article, or statute is affected by this adoption.

§217.9. Continuing Education Credit for Licensees.

(a) A continuing education course is any training course that is recognized by the commission, specifically:

(1) legislatively required continuing education curricula and learning objectives developed by the commission;

(2) training in excess of basic licensing course requirements;

(3) training courses consistent with assigned duties; or

(4) training not included in a basic licensing course.

(b) The commission may refuse credit for:

(1) a course, which does not contain a final examination or other skills test, if appropriate, as determined by the training provider;

(2) annual firearms proficiency;

(3) an out of state course not approved by that state's POST;

(4) training that fails to meet any commission established length and published learning objectives;

(5) an instructor claiming credit for a basic licensing course or more than one presentation of a non-licensing course by an instructor, per 24 month unit of a training cycle; or

(6) course(s) claimed by deceitful means;

(7) courses taken two or more times on the Peace Officer System for Education and Internet Training (POSEIT) system within one training unit.

(8) courses provided by the same training provider and taken more than two times within one training unit.

(c) The training provider or agency must report to the commission and keep on file in a format readily accessible to the commission, a copy of all continuing education course training reports.

(d) The effective date of this section is June 1, 2006.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601620

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: June 1, 2006

Proposal publication date: January 6, 2006

For further information, please call: (512) 936-7717



37 TAC §217.17

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code by repealing §217.17, Active License Renewal. This adoption is without changes to the proposed text

as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 95) and will not be republished.

The repeal of §217.17, Active License Renewal is adopted due to changes in law. During the 79th Legislature, Regular Session, House Bill 1438 amended §1701.353(b) and charges the Commission to request a report from an employing agency of a licensee who is non-compliant with continuing education requirements. This amendment also requires the Commission to contact licensee by certified mail if records indicate that they are in non-compliance. This change grants a licensee a 60-day extension to obtain the required training or request an administrative hearing if the licensee claims that mitigating circumstances exist or if the licensee's employing agency did not provide the opportunity to attend required training course. This change eliminates this section and expiration of license.

No comments were received.

The repeal is adopted under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The repeal as adopted is in compliance with Texas Occupations Code §1701.353, Continuing Education Procedures.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601627

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: June 1, 2006

Proposal publication date: January 6, 2006

For further information, please call: (512) 936-7717



37 TAC §217.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code by amending §217.19, Reactivation of a License. This adoption is without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 95) and will not be republished.

Adopted amendments to §217.19, Reactivation of a License, were made to subsection (a) to clean up language used to reactivate a license. Subsections (b) and (c) are deleted because they do not belong in this section as these individuals have never held a license. Subsections (d) - (h) are change to keep alphabetical order. Subsection (f) is amended to reflect the effective date for these changes.

Comments were received from a captain of the administration division, Missouri City Police Department, who suggest that a change to §217.19(e)(5). A reading to §217.3 reveals substantive and pertinent subsections refer to agency responsibilities, not an individual responsibility. Only sections (c) and (g) do not refer to an agency responsibility, referring instead to the accepted application format and effective date of this section. No changes were made to the rule as a result of the comments.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code §1701.316, Reactivation of Peace Officer License.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601628

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: June 1, 2006

Proposal publication date: January 6, 2006

For further information, please call: (512) 936-7717



CHAPTER 219. PRELICENSING AND REACTIVATION COURSES, TESTS, AND ENDORSEMENTS

37 TAC §219.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code by amending §219.1, Eligibility to Take State Examinations. This adoption is without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 96) and will not be republished.

Adopted amendments to §219.1, Eligibility to Take State Examinations, were made to subsection (b)(2) to clarify out of state officers that must meet our definition of peace officer. Subsection (3) was added to include exam results that are over two years old and never appointed. Amendments to subsection (i) and (j) is for clarification. Subsection (k) is amended to reflect the effective date for these changes.

No comments were received.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code §1701.304, Examination.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601635

Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: June 1, 2006
Proposal publication date: January 6, 2006
For further information, please call: (512) 936-7717



37 TAC §219.5

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code by amending §219.5, Examinee Requirements. This adoption is without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 97) and will not be republished.

Adopted amendments to §219.5, Examinee Requirements, were made to subsection (a)(2) requires a federal or state issued photo ID to take a licensing exam. Subsection (c) is amended to reflect the effective date for these changes.

No comments were received.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code §1701.304, Examination.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601636
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: June 1, 2006
Proposal publication date: January 6, 2006
For further information, please call: (512) 963-7717



CHAPTER 221. PROFICIENCY CERTIFICATES AND OTHER POST-BASIC LICENSES

37 TAC §221.9

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts amendments to Title 37, Texas Administrative Code, §221.9, Standardized Field Sobriety Testing Proficiency (SFST). This adoption is without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 98) and will not be republished.

Adopted amendments to §221.9, Standardized Field Sobriety Testing Proficiency (SFST), were made to subsection (a) by changing the proficiency certificate to a practitioner certificate

and removes the 35-test case requirement, which is not part of the National Highway Transportation Safety Administration (NHTSA) curriculum. These changes meet or exceed the minimum standards established by the Commission. Subsection (b) is amended to reflect the effective date for these changes.

No comments were received.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers, which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code, §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 16, 2006.

TRD-200601682
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education
Effective date: June 1, 2006
Proposal publication date: January 6, 2006
For further information, please call: (512) 936-7717



37 TAC §221.19

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) adopts an amendment to Title 37, Texas Administrative Code by amending §221.19, Firearms Instructor Proficiency. This adoption is without changes to the proposed text as published in the January 6, 2006, issue of the *Texas Register* (31 TexReg 99) and will not be republished.

Adopted amendments to §221.19, Firearms Instructor Proficiency amends subsection (a) (2) by expanding this section to include other firearms instructor courses that meet or exceed the minimum standards established by the Commission. Subsection (b) is amended to reflect the effective date for these changes.

No comments were received.

This section is adopted for amendment under Texas Occupations Code, Chapter 1701, §1701.151, General Powers which authorized the Commission to promulgate rules for administration of this chapter.

The rule amendment as adopted is in compliance with Texas Occupations Code §1701.402, Proficiency Certificates.

No other code, article, or statute is affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 14, 2006.

TRD-200601638

Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and
Education
Effective date: June 1, 2006
Proposal publication date: January 6, 2006
For further information, please call: (512) 936-7717

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 109. DEAF AND HARD OF HEARING SERVICES

SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

DIVISION 7. CERTIFIED COURT INTERPRETERS

40 TAC §109.913

The Texas Health and Human Services Commission adopts the amendment of Title 40, Part 2, §109.913, of the rules of the Department of Assistive and Rehabilitative Services, concerning the training and qualification requirements for taking the certified court interpreter examination administered by the Office for

Deaf and Hard of Hearing Services, without changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 695). The section is adopted without changes and will not be republished.

The amendment is being adopted to identify the approved courses of instruction in courtroom interpretation skills and training programs for certified court interpreters, as provided by Government Code, §57.022(b)(2).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 17, 2006.

TRD-200601689

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: April 20, 2006

Proposal publication date: February 3, 2006

For further information, please call: (512) 424-4050

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5,
Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

EXEMPT FILING NOTIFICATION COMMISSIONER'S ORDER
NO. 06-0273

PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF AMENDMENTS TO THE TEXAS BASIC MANUAL OF RULES, CLASSIFICATIONS AND EXPERIENCE RATING PLAN FOR WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE TO SET FORTH THE RULES AND PROVIDE THE ENDORSEMENT TO BE USED FOR POLICYHOLDERS WHO ELECT TO PROVIDE WORKERS' COMPENSATION HEALTH CARE SERVICES TO INJURED EMPLOYEES THROUGH A CERTIFIED WORKERS' COMPENSATION HEALTH CARE NETWORK

The Commissioner of Insurance adopted amendments proposed by the staff of the Workers' Compensation Classifications, Premium Calculation and Research Division of the Property and Casualty Insurance program at the Texas Department of Insurance (Department) to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (the Manual). The adopted amendments facilitate implementation of House Bill 7 (HB 7), enacted by the 79th Texas Legislature, Regular Session, 2005. HB 7, in pertinent part, authorized the establishment of workers' compensation health care networks for the provision of workers' compensation medical benefits; and provided the statutory framework for the establishment of standards for the certification, administration, evaluation, and enforcement of the delivery of health care services to injured employees by workers' compensation health care networks. The purpose of the adopted amendments to the Manual is to set forth the rules regarding a network premium credit and provide the endorsement to be used for policyholders who elect to provide workers' compensation health care services to injured employees through a certified workers' compensation health care network.

The Commissioner adopted the amendments as proposed in the staff's petition filed on February 8, 2006. Notice of the proposal (Ref. No. W-0206-01-I) was published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 1053). No hearing was requested on this matter. The Department received no comments concerning the proposed amendments.

The adoption amends the Manual as follows:

1. Amends Rule VI, relating to Rates and Premium Determination, by adding a new Section K, entitled Certified Workers' Compensation

Health Care Network. The new section states that the department anticipates that certified workers' compensation health care networks will help reduce the cost of workers' compensation claims in Texas and that cost savings, both anticipated and actual, should be passed on to policyholders participating in the networks in the form of a premium credit. The amount of the premium reduction, if applicable, is to be shown on the Information Page of the policy and is to be determined by applying the network credit factor to the estimated modified/schedule rating premium. The premium reduction can be prorated based on when during the policy period the policyholder makes the election to participate or makes the election to terminate participation in a certified network. The premium reduction can be forfeited if the carrier determines that the policyholder has failed to provide employees notice of network requirements that are mandated in new subsection K(2)(a) or the employee acknowledgement form referenced in new subsection K(2)(b) of the rule. Before a policyholder's premium reduction can be forfeited by the insurance carrier, a letter giving 30 days notice of possible premium reduction forfeiture must be sent by the insurance carrier to the policyholder explaining why the premium credit is being forfeited. If the policyholder corrects the reason(s) for the potential forfeiture of the premium credit within the 30 days, the premium reduction will not be forfeited.

2. Amends Appendix A, relating to Procedures. Specifically, the adoption amends subsection A(6), relating to Policy Issuance, by adding to the list of items that must be included on the Information Page of the policy, the network credit factor, if any is applicable. This amendment also necessitates a re-ordering and re-numbering of the items listed in subsection A(6).

3. Requires a new endorsement, entitled the Texas Health Care Network Endorsement WC 42 04 08, to be attached to all workers' compensation policies when the policyholder elects to provide workers' compensation health care services to injured employees through a certified workers' compensation health care network. The language of the endorsement advises the policyholder that there may be a premium reduction because of the policyholder's election to provide workers' compensation health care services to injured employees through a certified workers' compensation health care network, and explains the information that the carrier must provide to policyholders pursuant to new Section K of Rule VI.

The adopted amendments are more particularly set forth in the applicable portions of the Manual that are attached hereto and made a part hereof for all purposes.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code Articles 5.56 and 5.96.

The amendments as adopted by the Commissioner are on file in the Chief Clerk's Office of the Texas Department of Insurance under Reference No. W-0206-01-I and are incorporated by reference into Commissioner's Order No. 06-0273.

This notification is made pursuant to the Insurance Code Article 5.96, which exempts it from the requirements of the Government Code Chapter 2001 (Administrative Procedure Act).

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that amendments to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance as described herein and set forth in the exhibit

attached to this Order and incorporated into this Order by reference, be adopted 15 days after notice of adoption is published in the *Texas Register*.

TRD-200601756
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: March 22, 2006

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for readoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 66, Registration of Property Tax Consultants. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted to Tamala Fletcher, Legal Assistant, General Counsel's Office, P. O. Box 12157, Austin, Texas 78711, facsimile (512) 475-3032, or by e-mail, tamala.fletcher@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

- 16 TAC §66.1, Authority
- 16 TAC §66.10, Definitions
- 16 TAC §66.20, Registration Requirements--General
- 16 TAC §66.21, Pre-registration and Upgrade Information
- 16 TAC §66.23, Registration--Waiver of Requirements
- 16 TAC §66.25, Continuing Education
- 16 TAC §66.61, Responsibilities of Department--Examination
- 16 TAC §66.65, Advisory Counsel
- 16 TAC §66.70, Responsibilities of Registrant--General
- 16 TAC §66.71, Responsibilities of Registrant--Records
- 16 TAC §66.72, Responsibilities of Registrant--Recognized Private Provider
- 16 TAC §66.80, Fees

16 TAC §66.90, Sanctions--Administrative Sanctions/Penalties

16 TAC §66.100, Code of Ethics and Professional Responsibility

TRD-200601713

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: March 20, 2006



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for readoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 80, Licensed Court Interpreters. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

Any questions or written comments pertaining to this rule review may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, P. O. Box 12157, Austin, Texas 78711, facsimile (512) 475-3032, or by e-mail, caroline.jackson@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

- 16 TAC §80.1, Authority
- 16 TAC §80.10, Definitions
- 16 TAC §80.20, Licensing Requirements--General
- 16 TAC §80.22, Licensing Requirements--Examination
- 16 TAC §80.23, Licensing Requirements--Renewal
- 16 TAC §80.25, Continuing Education
- 16 TAC §80.70, Responsibilities of Licensee--General
- 16 TAC §80.80, Fees
- 16 TAC §80.90, Sanctions--Administrative Sanctions/Penalties

16 TAC §80.100, Code of Ethics and Professional Responsibility

TRD-200601712

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: March 20, 2006



Teacher Retirement System of Texas

Title 34, Part 3

The Teacher Retirement System of Texas (TRS) files this notice of intention to review and to consider for readoption, amendment, or repeal the rule chapters in Title 34, Part 3, of the Texas Administrative Code: Chapter 21 (Purpose and Scope), Chapter 23 (Administrative Procedures), Chapter 25 (Membership Credit), Chapter 27 (Termination of Membership and Refunds), Chapter 29 (Benefits), Chapter 31 (Employment After Retirement), Chapter 33 (Legal Capacity), Chapter 35 (Payments by TRS), Chapter 39 (Proof of Age), Chapter 41 (Health Care and Insurance Programs), Chapter 43 (Contested Cases), Chapter 47 (Qualified Domestic Relations Orders), Chapter 49 (Collection of Delinquent Obligations), and Chapter 51 (General Administration). This review and consideration is being conducted in accordance with §2001.039 of the Texas Government Code. The review will include,

at a minimum, an assessment as to whether the reasons for adopting or readopting the rules in these chapters continue to exist. TRS has previously filed a rule review plan, which is available on the Secretary of State's Web site at www.sos.state.tx.us.

Written comments pertaining to this proposed rule review must be submitted to Ronnie Jung, Executive Director, Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701. The deadline for written comments is 30 days after publication of this notice in the *Texas Register*. Any changes to these rules proposed because of the rule review will be published for public comment in the Proposed Rules section of one or more future issues of the *Texas Register* and adopted in accordance with the requirements of the Administrative Procedure Act, Chapter 2001 of the Texas Government Code. The public will be given the opportunity to comment on the proposed rule review and any proposed rule changes arising out of the review at upcoming meetings of the TRS Board of Trustees.

TRD-200601704

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Filed: March 20, 2006



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §3.80(a)

Table 1. Railroad Commission Oil and Gas Division Forms

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
AOF-1	Field Application for AOF Status	10/95	3.31
AOF-2	Individual Operator Application for AOF Status	10/95	3.31
AOF-3	Operator's Review of AOF Status	12/95	3.31
C-1	Carbon Black Plant Report	7/66	3.54, 3.63
C-2	Application for Permit to Operate a Carbon Black Plant	7/66	3.54, 3.63
C-3	Permit to Operate Carbon Black Plant	12/67	3.54, 3.63
CF-1	Commercial Facility Bond	8/98	3.78
CF-2	Commercial Facility Irrevocable Letter of Credit	8/98	3.78
G-1	Gas Well Back Pressure Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.28, 3.31
G-3	Gas Storage Data Sheet	10/94	3.96, 3.97
G-5	Gas Well Classification Report	1/86	3.53
G-9	Gas Cycling Report	4/71	
G-10	Gas Well Status Report	9/00	3.28, 3.53, 3.55, 3.71
GC-1	Gas Well Capability	5/92	3.31
GT-1	Geothermal Production Test, Completion or Recompletion Report, and Log	01/76	3.4, 3.16, 3.33
GT-2	Producer's Monthly Report of Geothermal Wells	01/76	Tex. Nat. Res. Code, Ch. 141
GT-3	Monthly Geothermal Gatherer's Report	01/76	Tex. Nat. Res. Code, Ch. 141
GT-4	Producer's Certificate of Compliance and Authorization to Transport Geothermal Energy and/or Natural Gas and/or Other Minerals	01/76	Tex. Nat. Res. Code, Ch. 141
GT-5	Application to Inject Fluid into a Reservoir Productive of Geothermal Resources	9/75	Tex. Nat. Res. Code, Ch. 141
H-1	Application to Inject Fluid into a Reservoir Productive of Oil or Gas	4/82 Revision effective 05/01/04	3.46
H-1A	Injection Well Data for H-1 Application	4/82 Revision effective 05/01/04	3.46
H-1S	Injection Well Area Permit	12/98	3.46
H-2	Permit Application to Create, Operate and Maintain a Brine Mining Facility	5/99	3.81
H-4	Application to Create, Operate and Maintain an Underground Hydrocarbon Storage Facility	4/82	3.95, 3.97
H-5	Disposal/Injection Well Pressure Test Report	6/85	3.9, 3.46, 3.96
H-7	Fresh Water Data Form	3/68	3.46
H-8	Crude Oil, Gas Well Liquids, or Associated Products Loss Report	6/70	3.20
N/A	Interim H-8 Crude Oil Spill Sheet	12/93	3.20
H-9	Certificate of Compliance, Statewide Rule 36 (Hydrogen Sulfide)	12/77	3.36
H-10	Annual Disposal/Injection Well Monitoring Report (RRC computer-generated)	7/95	3.9, 3.46
H-10H	Annual Well Monitoring Report Underground Storage in Salt Formations	7/95	3.95, 3.96, 3.97
H-11	Application for Permit to Maintain and Use a Pit	5/84	3.8

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
H-12	New or Expanded Enhanced Oil Recovery Project and Area Designation Approval Application	10/03	3.50
H-13	EOR Positive Production Response Certification Application	4/90	3.50
H-14	Enhanced Oil Recovery Reduced Tax Annual Report	2/93	3.50
H-15	Test on an Inactive Well More than 25 Years Old	8/93	3.14
H-20	Hazardous Oil and Gas Waste Generator (and Transporter) Notification	6/96	3.98
H-21	Annual Hazardous Oil and Gas Waste Report	10/01	3.98
L-1	Electric Log Status Report	1/02	3.16
MD-1	Optional Operator Market Demand Forecast for Gas Well Gas in Prorated Fields	5/92	3.31
OW-1	Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Wells	4/06	Tex. Nat. Res. Code, §89.060
OW-2	Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Wells	4/06	Tex. Nat. Res. Code, §89.060
OW-3	Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well	4/06	Tex. Nat. Res. Code, §89.060
PR	Monthly Production Report	New Form effective for production reports filed for 01/05 or after 5:00 pm CT 02/11/05	3.27, 3.54, 3.58
P-1B	Producer's Monthly Supplemental Report	9/90	3.50, 3.80
P-3	Authority to Transport Recovered Load or Frac Oil	3/77	3.58
P-4	Producer's Certificate of Compliance and Transportation Authority	5/02	3.1, 3.14, 3.30, 3.58, 3.73, 3.78
P-5	Organization Report	1/87	3.1
P-5 IWB	Individual Well Bond	11/00	3.78
P-5 IWLC	Individual Well Irrevocable Documentary Letter of Credit	1/02	3.78
P-5LC	Irrevocable Documentary Blanket Letter of Credit	2/01	3.78
P-5 PB(1)	Individual Performance Bond	2/01	3.78
P-5PB(2)	Blanket Performance Bond	2/01	3.78
P-5S	P-5 Supplemental Officer Listing	9/91	3.1
N/A	Franchise Tax Certification (The Commission will accept a copy of the Certificate of Account Status from the Texas Comptroller of Public Accounts in lieu of the Commission=s form.)	11/01	3.1
P-6	Request for Permission to Consolidate/Subdivide Leases	5/02	3.26, 3.27, 3.38, 3.39, 3.58
P-7	New Field Designation and/or Discovery Allowable Application	2/89	3.41, 3.42
P-8	Request for Clearance of Storage Tanks Prior to Potential Test	12/82	3.58
P-12	Certificate of Pooling Authority	5/01	3.31, 3.38, 3.40
P-13	Application of Landowner to Condition an Abandoned Well for Fresh Water Production	9/79	3.14
P-15	Statement of Productivity of Acreage Assigned to Proration Units	5/71	3.31
P-17	Application for Exception to Statewide Rules 26 and/or 27 (Commingling)	1/78	3.26, 3.27
P-17A	Interim Commingling/Measurement Application Supplement	6/97	3.26, 3.27
P-18	Skim Oil/Condensate Report	1/86	3.56
PS-79	Application for a Permit to Construct a Sour Gas Pipeline Facility	3/98	3.106

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
R-1	Monthly Report and Operations Statement for Refineries	1974	3.61
R-2	Monthly Report for Reclaiming and Treating Plants	12/77	3.8, 3.57
R-3	Monthly Report for Gas Processing Plants	10/00	3.54, 3.56, 3.60, 3.62
R-4	Gas Processing Plant Report of Gas Injected	9/75	3.54
R-5	Certificate of Compliance (Gasoline Plants and Refineries)	3/72	3.61
R-6	Application for Certificate of Compliance (Cycling Plant)	9/75	3.62
R-7	Pressure Maintenance & Repressuring Plant Report	*	3.54
R-9	Application for Permit to Operate Reclamation Plant	2/90	3.57
S-10	Application for Transfer of Allowable, Casing Leak Well East (Texas Field)	2/89	Field Rules
ST-1	Application for Texas Severance Tax Incentive Certification	10/03	3.83, 3.101, 3.103
T-1	Monthly Transportation & Storage Report	3/72	3.59
T-4, T-4A, T-4C	Forms relating to pipeline permits; under jurisdiction of the Safety Division	T-4: 9/99T-4A: 4/99T-4C: 4/97	3.70
T-6	Pipeline Company Monthly Report of Gas Exported from Texas	1948	Exec. Order
T-7	Dist. 10 Panhandle Fields Monthly Gas Gatherer Report	6/91	Dkt. 10-87017
VCP-1	Voluntary Cleanup Program Application	11/03	4.401 - 4.405
VCP-2	Voluntary Cleanup Program Agreement	11/03	4.401 - 4.405
W-1	Application to Drill, Deepen, Plug Back, or Reenter	9/01 (Revision effective 07/01/04)	3.5
W-1A	Substandard Acreage Drilling Unit Certification	5/01	3.38
W-1D	Supplemental Directional Well Information	07/01/04	3.5
W-1H	Supplemental Horizontal Well Information	07/01/04	3.5
W-1X	Application for Future Re-Entry of Inactive Wellbore and 14(b)(2) Extension Permit	10/03	3.14, 3.78
W-2	Oil Well Potential Test, Completion or Recompletion Report, and Log	4/83	3.4, 3.9, 3.16, 3.46, 3.51
W-3	Plugging Record	12/92	3.14
W-3A	Notice of Intention to Plug and Abandon	1/83	3.14
W-4	Application for Multiple Completion	8/69	3.6
W-4A	Sketch of Multiple Completion Installation	8/69	3.6
W-5	Packer Setting Report	8/69	3.6
W-6	Communication or Packer Leakage Test	1/70	3.6
W-7	Bottom-hole Pressure Report	*	3.41
W-9	Net Gas-Oil Ratio Report	7/69	RRC Order, §49
W-10	Oil Well Status Report	7/95	3.26, 3.27, 3.52, 3.53
W-12	Inclination Report	1/71	3.11
W-14	Application to Dispose of Oil & Gas Waste by Injection into a Porous Formation Not Productive of Oil or Gas	1/82 Revision effective 05/01/04	3.9
W-15	Cementing Report	4/83	3.8, 3.13, 3.14
WH-1	Application for Oil and Gas Waste Hauler's Permit (formerly Application for Salt Water Hauler's Permit)	4/94	3.8
WH-2	Oil and Gas Waste Hauler's List of Vehicles (formerly Salt Water Hauler's Permit Bond)	4/94	3.8
WH-3	Oil and Gas Waste Hauler's Authority to Use Approved Disposal/Injection System	4/94	3.8
W-21	Application for Exception to Statewide Rule 21 to Produce by Swabbing, Bailing, or Jetting	2/03	3.21

Form Number	Form Title	Creation or Last Revision Date (* No date available)	Statewide Rule Number (16 TAC § __) or Other Authority
Data Sheet	SWR 32 Exception Data Sheet	2/99	3.32
Data Sheet	SWR 10 Exception Data Sheet	*	3.10
EPA 8700-12	RCRA Subtitle C Site Identification Form (not an RRC form but required)	01/04	3.98
N/A	Claim for Proceeds of Salvage	9/94	Tex. Nat. Res. Code, §89.086
N/A	Request for Notice by Lienholder or Non-Operator	9/94	Tex. Nat. Res. Code, §§89.043(c), 89.085(f), 91.115(f)
SAD	Security Administrator Designation (SAD) Form	07/04	3.80

Figure: 22 TAC §139.35(d)

VIOLATION	CITATION	SUGGESTED SANCTION		
		FIRST OCCURRENCE	SECOND OCCURRENCE	THIRD OCCURRENCE
Offer and perform consulting engineering services without being registered	§1001.405; §137.77(a), (e)	Voluntary Compliance \$250.00	\$500.00	\$750.00
Offer and perform consulting engineering services while registration was expired	§1001.405; §137.77(d), (e)	\$500.00	\$750.00	\$1,200.00
Offer only (no consulting engineering services were performed) without being registered or while registration was expired	§1001.405; §137.77(a), (e)	\$100.00	\$500.00	\$1,000.00

Figure: 22 TAC §203.16(c)

Date _____ - _____ - _____

Total Time Spent: _____

Permission To Embalm: Yes ☐ No ☐

Treatment to proceed on basis of:

____ signed authorization ____ oral authorization

____ statutory 3-hr attempt to secure

____ orders from _____

Name & location where embalming procedure was performed: _____

Deceased _____ Mortuary _____

Age c. _____ yrs. Race _____ Sex: ☐ male ☐ female Weight c. _____ lbs. Height c. _____ ft. _____ in.

Date of death _____ Time _____: _____ am pm Time of removal _____: _____ am pm Date: _____ - _____ - _____

PRE-EMBALMING OBSERVATIONS

Operation before death? ☐ No ☐ Yes Type/Area _____

Autopsy performed? ☐ No ☐ Yes ☐ Complete ☐ Torso/Trunk ☐ Cranial ☐ Before embalming ☐ After embalming

Viscera: ☐ Retained ☐ Received

Time between death and treatment: c. _____ hrs. Time between receipt of remains and treatment: c. _____ hrs.

Body: ☐ Warm ☐ Cold ☐ Refrigerated: Duration c. _____ hrs. ☐ Thawed//Out of Refrigeration c. _____ hrs.

Rigor mortis: Yes _____ No _____

Abdominal distension: ☐ No ☐ Yes ☐ Slight ☐ Moderate ☐ Intense ☐ Liquid ☐ Gas

Purge before embalming: ☐ No ☐ Yes Type: _____

Edema: ☐ Abdomen ☐ Thorax ☐ R. Leg ☐ L. Leg ☐ R. Arm ☐ L. Arm ☐ Face Degree _____

Discolorations: ☐ Lividity ☐ Stain _____ in: _____

Lesions: _____

Comments: _____

EMBALMING PROCEDURE

Arteries Injected:

Cm. Carotid R-L _____ Iliac R-L _____

Subclavian R-L _____ Femoral R-L _____

Axillary R-L _____ Radial R-L _____

Brachial R-L _____ Dorsalis pedis R-L _____

Others _____

Veins Drained:

Internal Jugular R-L _____

Axillary R-L _____

Iliac R-L _____

Femoral R-L _____

Others _____

Disinfection: (Check Appropriate Areas)

Eyes _____ Other body orifices _____

Mouth _____ Nose _____

Body orifices packed _____

Remains bathed with antiseptic soap _____

Condition of: Arteries: _____ Veins: _____

Injection:

pre-injection (co-injection) _____ 1st _____ gal. _____ 2nd _____ gal. _____ 3rd _____ gal.

arterial concentrate _____ (%) or (Index) 1st _____ oz. _____ 2nd _____ oz. _____ 3rd _____ oz.

arterial concentrate _____ (%) or (Index) 1st _____ oz. _____ 2nd _____ oz. _____ 3rd _____ oz.

fluid modifier _____ 1st _____ oz. _____ 2nd _____ oz. _____ 3rd _____ oz.

humectant _____ 1st _____ oz. _____ 2nd _____ oz. _____ 3rd _____ oz.

other _____ 1st _____ oz. _____ 2nd _____ oz. _____ 3rd _____ oz.

Injection Method: ☐ Continuous ☐ Alternate

Drainage: ☐ Intermittent ☐ Continuous

Quality of Drainage _____ Quality: ☐ Heavy clots ☐ Medium ☐ Light ☐ None

Cavity Treatment:

Cavity fluid _____ (%) Quantity used _____ oz. Method: ☐ Gravity ☐ Motorized ☐ Delayed ☐ Immediate

Autopsied cases: ☐ Viscera immersed ☐ Preservative powder used ☐ Additional treatment: _____

Other: ☐ Direct ☐ Topical ☐ Hypodermic Treatment (Check Appropriate Areas): ☐ Arms ☐ Torso ☐ Face ☐ Legs ☐ Neck

Distribution Exceptions _____

Additional Treatment _____

Condition of Body at Completion (include comments on conditions noted above) _____

Posing Features

Mouth Closure: ☐ Suture ☐ Needle Injection ☐ Natural ☐ Dentures ☐ Cotton ☐ Other _____

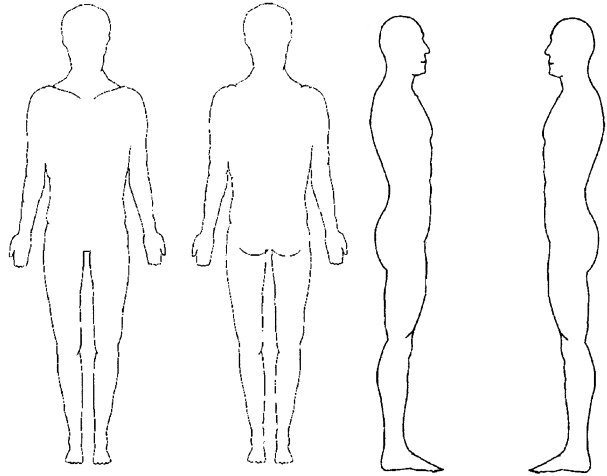
Eye Closure: ☐ Cotton ☐ Eye Caps ☐ Natural ☐ Other _____

IDENTIFICATION AND TREATMENT REFERENCE

Indicate on chart all identifying scars, incisions, lesions and special body characteristics.

Description of items marked on chart:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____



Date and Time Case Report Completed: _____

License No. _____

Embalmer

Provisional License No. _____

Student or Provisional Licensee

E. g. "housekeeping" post-embalming checklist (re-aspirated, dressed, etc.)

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas State Affordable Housing Corporation

Notice of Public Hearing Regarding the Issuance of Bonds

Notice is hereby given of a public hearing to be held by the Texas State Affordable Housing Corporation (the "Issuer") at 12:00 p.m. on April 26, 2006 at 1005 Congress Avenue, Suite B10 (Conference Room), Austin, Texas 78701, on the proposed issuance by the Issuer of one or more series of revenue bonds (the "Bonds") to provide financing for the acquisition of single family mortgages in the State of Texas, pursuant to its fire fighter and law enforcement or security officers home loan program (the "Project"). The maximum aggregate face amount of the Bonds to be issued with respect to the Project is \$25,000,000. All interested persons are invited to attend the public hearing to express orally, or in writing, their views on the Project and the issuance of the Bonds. The Bonds shall not constitute or create an indebtedness, general or specific, or liability of the State of Texas, or any political subdivision thereof. The Bonds shall never constitute or create a charge against the credit or taxing power of the State of Texas, or any political subdivision thereof. Neither the State of Texas, nor any political subdivision thereof shall in any manner be liable for the payment of the principal of or interest on the Bonds or for the performance of any agreement or pledge of any kind which may be undertaken by the Issuer and no breach by the Issuer of any agreements will create any obligation upon the State of Texas, or any political subdivision thereof. Further information with respect to the proposed Bonds will be available at the hearing or upon written request prior thereto addressed to David Long at the Texas State Affordable Housing Corporation, 1005 Congress Avenue, Suite 500, Austin, Texas 78701; 1-888-638-3555 ext. 402.

Individuals who require auxiliary aids in order to attend this meeting should contact Laura Smith, ADA Responsible Employee, at 1-888-638-3555, ext. 400 through Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals may transmit written testimony or comments regarding the subject matter of this public hearing to David Long at dlong@tsahc.org.

TRD-200601747

David Long
President

Texas State Affordable Housing Corporation

Filed: March 22, 2006



Ark-Tex Council of Governments

Request for Proposals

SUBJECT: Request for Proposals (RFP) for "Regional Transit Services Planning" for the Ark-Tex Council of Governments (ATCOG) Region of Texas.

INVITATION: The purpose of this RFP is to solicit the services of a technical planning consultant to provide regional transit services planning and to develop a public transportation coordination plan for the ATCOG Region. The region is defined by the council of government boundaries of the ATCOG Region and includes Bowie, Cass, Delta,

Franklin, Hopkins, Lamar, Morris, Titus, and Red River Counties. A full RFP package can be obtained by contacting Owetta Walton, Transportation Coordinator, Ark-Tex Council of Governments, P. O. Box 5307, Texarkana, Texas 75501, phone (903) 832-8636 or e-mail: owalton@atcog.org.

PROCURING AGENCY: Ark-Tex Council of Governments.

QUESTIONS: Request for revisions or exceptions to the RFP must be received in writing to the attention of Lynda Woods-Pugh, Manager of Transportation Services, Ark-Tex Council of Governments, P. O. Box 5307, Texarkana, TX, 75505-5307, by 5:00 p.m. Thursday, March 30, 2006. The response to all questions and requests for revisions or exceptions will be issued by ATCOG by 5:00 p.m., Thursday, April 6, 2006.

AWARD: This is a request for proposals and award will be based on project personnel, technical approach, and price.

PROPOSAL: Proposals shall be submitted in a sealed envelope or box clearly marked on the outside.

DEADLINE: "SEALED PROPOSAL FOR REGIONAL TRANSIT SERVICES PLANNING." The technical and price proposals should be in separate, marked envelopes within the SEALED PROPOSAL. Proposals described herein can be submitted either by mail or in person on any working day between 8:00 a.m. and 5:00 p.m., until Monday, April 17, 2006, to the attention of Lynda Woods-Pugh, Manager of Transportation Services, at the offices of the Ark-Tex Council of Governments located at 122 Plaza West, Texarkana, TX, or mailed to P. O. Box 5307, Texarkana, TX 75505-5307.

PERFORMANCE: The performance period for the contract will be through November 1, 2006.

PERIOD: Start of service is estimated to be on or about May 1, 2006.

INSURANCE: Each prospective Proposer is cautioned to review the Insurance requirements.

DBE: Disadvantaged Business Enterprise (DBE) participation goal for this solicitation is 4.00 percent.

TRD-200601691

L. D. Williamson

Executive Director

Ark-Tex Council of Governments

Filed: March 20, 2006



Bexar Metropolitan Water District

Public Notice Voting Rights Act Submission to the U.S. Department of Justice

AVAILABLE FOR PUBLIC INSPECTION

TAKE NOTICE that the Bexar Metropolitan Water District, submitted an application to the Department of Justice for pre-clearance, pursuant to the Voting Rights Act of 1965, as amended, of the Adoption of a Redistricting Plan Bexar Metropolitan Water District. The Board of

Directors of the Bexar Metropolitan Water District approved the plan on January 9, 2006.

Pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, and 28 C.F.R. Part 51, Bexar Metropolitan Water District filed a Voting Rights Act Submission with the Department of Justice for pre-clearance of the above-referenced Redistricting Plan, dated March 17, 2006.

A complete copy of the Voting Rights Act Submission is available for inspection, review, and copying in the office of the General Manager of the District, located in the administrative offices 2047 W. Malone, San Antonio, Texas 78225. Such complete duplicate copy is available to the public during office hours from 8:00 a.m. until 5:00 p.m., Monday through Friday.

The general public is invited to make comments to the Attorney General of the United States regarding such Voting Rights Act Submission and the posting of this notice. Any interested person is invited to make any such comment in writing addressed to:

Chief, Voting Section
Civil Rights Division
Room 7254 - NWB
Department of Justice
950 Pennsylvania Ave., N. W.
Washington, DC 20530
TRD-200601718
F. Gilbert Olivares
General Manager
Bexar Metropolitan Water District
Filed: March 21, 2006

Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Public Safety (DPS), announces the issuance of a Request for Proposal (RFP) #303-6-11126 to solicit Proposals to sell qualified parcels of land to DPS, located in the City of Bryan or the City of College Station, Brazos County, Texas. The site should contain a minimum of 3.5 acres of land or 152,460 square feet of contiguous land. The preferred size is 5 acres or 217,800 square feet of contiguous land. However, sites greater than 5 acres will be considered.

The deadline for questions is March 31, 2006; and the deadline for proposals is April 7, 2006 at 3:00 P.M. The award date is to be determined. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to issue an award on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Richard Ehlert at (512) 463-0209 or Richard.Ehlert@tbpc.state.tx.us. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at: http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=63969.

TRD-200601692

Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: March 20, 2006

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 10, 2006, through March 16, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on March 22, 2006. The public comment period for these projects will close at 5:00 p.m. on April 24, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Gulf Coast Waste Disposal Authority (GCA); Location: The project site is located on the southeast side of a 40-acre GCA wastewater treatment facility located at 3500 Loop 197 South in Texas City, Galveston County, Texas. The project site is located approximately 4,000 feet west of Swan Lake. The project can be located on the U.S.G.S. quadrangle map entitled "Swan Lake, Texas". Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 313900; Northing: 3248200. Directions to the site: from Houston, take IH 45 south to exit No. 7. Veer left at fork towards FM 146 and stay in the far right hand lane onto Loop 197 South. After crossing the railroad tracks, the facility exit will be approximately one mile on the right. Enter at the second GCA entrance on the right. This is a limited access facility. **Project Description:** The applicant proposes to construct an access road through an adjacent wetland, filling approximately 0.52 acre of palustrine emergent wetlands. The wetland acreage has not been verified by the Corps of Engineers. Approximately 831 cubic yards of clean soil from a commercial borrow site would be discharged into the wetland below the plane of ordinary high water to construct the approximately 990-foot-long by 30-foot-wide (not including side slopes) road. The proposed road would be used to transport fill and equipment necessary to construct an earthen base for a new Oxygen-Activated Sludge project in what is currently the Spill Basin of the existing wastewater treatment plant and would be retained to provide a wide road and turnaround capability for the increased volume of trucks that would be coming to the facility after the Oxygen-Activated Sludge project is complete. The existing wastewater treatment facility was authorized by Department of the Army Permit No. 9151, issued on 2 January 1973 to the GCA. The permit expired on 31 December 1975. The applicant's alternatives analysis states that the proposed road was designed to avoid and minimize impacts to higher-quality wetlands while avoiding direct impacts to the Office/Laboratory and the Maintenance Buildings, and thus, facility operations. The applicant stated that avoidance and minimization was accomplished by shifting the alignment to the east and utilizing two upland areas adjacent to the existing buildings and levee-roadway, achieving the project goal of creating a circular traffic pattern, improving facility operations and alleviating safety concerns while avoiding

and minimizing wetland impacts. The alternatives analysis stated that using existing facility roads for construction access would disrupt current operations and cause safety concerns at the existing Office/Laboratory Building, where pedestrian activity occurs. Widening the existing facility levee-roadway would disrupt facility operations during construction, placing a substantial burden on other wastewater treatment facilities that may not have the capacity to accept the full volume waste load resulting from complete process shutdown and having the same safety concerns at the Office/Laboratory Building. Routing the construction road from the existing 3.4-acre pad on the southwest corner of the facility diagonally (northeast) to the corner of the existing levee located west of the Maintenance Building would impact high-quality wetlands located between the pad and the levee and does not address the safety concerns at the Office/Laboratory Building. Similarly, routing the road west of the proposed site and aligning due north to the existing levee west of the Maintenance Building would impact high-quality wetlands. The applicant has not supplied a proposed compensatory mitigation plan for the loss of wetland functions. CCC Project No.: 06-0188-F1; Type of Application: U.S.A.C.E. permit application #9151(01) is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: City of Beaumont; Location: The project is located on the Neches River, Bunn's Bluff Raw Water Intake, at Bunn's Bluff canal, in Orange County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Pine Forest, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 393172; Northing: 3337831. Project Description: The applicant proposes to amend Permit No. 22659 to add hydraulic dredging to the authorization. This amendment consists of dredging in the Neches River within an area 0.22 acre in size. The proposed dredge area will be located at the intake of the Bunn's Bluff canal. The dredge area will be 200 feet long and 50 feet wide. The proposed dredge area will be dredged to a maximum depth of 13 feet below mud line, to an average water depth of 23

feet. The applicant also requests authorization to maintenance dredge this area for 10 years. The applicant proposes to place the dredge material within an area that was previously excavated out of uplands. The Corps of Engineers (Corps) has determined that the excavation of the dredge material placement area did not require a Corps permit. CCC Project No.: 06-0208-F1; Type of Application: U.S.A.C.E. permit application #22659(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P. O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200601714

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 20, 2006

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Comptroller of Public Accounts

Local Sales Tax Rate Changes Effective April 1, 2006

An additional 1/4 percent city sales and use tax for Municipal Street Maintenance and Repair as permitted under Chapter 327 of the Texas Tax Code will become effective April 1, 2006 in the cities listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Kemp (Kaufman Co)	2129033	.017500	.080000
Littlefield (Lamb Co)	2140029	.017500	.080000
Troy (Bell Co)	2014077	.017500	.080000

An additional 1/2 percent city sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section 4A will become effective April 1, 2006 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Grapeland (Houston Co)	2113022	.020000	.082500

The additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section 4B will be reduced to 1/8 percent effective April 1, 2006 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Richland Hills (Tarrant Co)	2220157	.020000	.082500

An additional 1/2 percent sales and use tax for improving and promoting economic and industrial development as permitted under Article 5190.6, Section 4B, and an additional 1/4 percent sales and use tax for Municipal Street Maintenance and Repair as permitted under Section 327 of the Texas Tax Code will become effective April 1, 2006 in the city listed below.

<u>CITY NAME</u>	<u>LOCAL CODE</u>	<u>LOCAL RATE</u>	<u>TOTAL RATE</u>
Silverton (Briscoe Co)	2023021	.017500	.080000

A 3/8 percent special purpose district sales and use tax will become effective April 1, 2006 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Richland Hills Crime Control and Prevention District	5220727	.003750	SEE NOTE 1

A 1/2 percent special purpose district sales and use tax will become effective April 1, 2006 in the special purpose district listed below.

<u>SPD NAME</u>	<u>LOCAL CODE</u>	<u>NEW RATE</u>	<u>TOTAL RATE</u>
Palmview Crime Control and Prevention District	5108528	.005000	SEE NOTE 2

NOTE 1 The boundaries for the Richland Hills Crime Control and Prevention District are the same as the boundaries for the City of Richland Hills. The total rate in the City of Richland Hills will be 8 1/4%.

NOTE 2 The boundaries for the Palmview Crime Control and Prevention District are the same as the boundaries for the City of Palmview. The total rate in the City of Palmview will be 8 1/4%.

TRD-200601715
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: March 20, 2006



Notice of Contract Award

Pursuant to Chapters 403 and 2156, Texas Government Code, the Comptroller of Public Accounts announces the contract award for overpayment recovery audit services. The notice of request for proposals was published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6951).

The contract was awarded to Horn & Associates, Inc., 690 E. Ft. Union Blvd., Suite 202, Salt Lake City, Utah 84121. The total amount of the contract is based on 13.5% of all funds actually recovered and reimbursed back to the State. The term of the contract is from March 13, 2006 to December 31, 2007, with option for two additional one-year renewal periods.

TRD-200601673
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 15, 2006



Notice of Request for Proposals

Pursuant to §§403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, §§54.602, 54.611 - 618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the issuance of its Request for Proposals (RFP #175m) for Large Capitalization Value Equity Investment Management Services ("Services") for the Board. The selected respondent will assist the Comptroller and the Board by providing the Services consistent with the Board's Investment Policy and Guidelines related to the Texas Tomorrow Constitutional Trust Fund ("Fund"), as described in this RFP and the contract, if any resulting from it ("Contract"). This RFP relates to the Board's portfolio of investment assets for its prepaid college tuition plan, which is designed to comply with Section 529 of the Internal Revenue Code. The prepaid tuition plan currently has approximately \$1.6 billion dollars in invested assets. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary Services. The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about June 1, 2006.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, March 31, 2006, after 10 a.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after 10:00 a.m. CZT on Friday, March 31, 2006. The website address is <http://esbd.tbpc.state.tx.us>.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, April 14, 2006. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Friday, April 21, 2006, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G24), no later than 2:00 p.m. (CZT), on Friday, April 28, 2006. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to and solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board shall make the final decision on any contract award or awards resulting from this RFP. The Comptroller and the Board each reserve the right, in their sole discretion, to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - March 31, 2006, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent to propose and Questions Due - April 14, 2006, 2:00 p.m. CZT; Official Responses to Questions posted - April 21, 2006; Proposals Due - April 28, 2006, 2:00 p.m. CZT; Contract Execution - June 1, 2006, or as soon thereafter as practical; Commencement of Project Activities - June 1, 2006, or as soon thereafter as practical.

TRD-200601738
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 22, 2006



Notice of Request for Proposals

Pursuant to §§403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, §§54.602, 54.611 - 618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the issuance of its Request for Proposals (RFP #175n) for Small Capitalization Core Equity Investment Management Services ("Services") for the Board. The selected respondent will assist the Comptroller and the Board by providing the Services consistent with the Board's Investment Policy and Guidelines related to the Texas Tomorrow Constitutional Trust Fund ("Fund"), as described in this RFP and the contract, if any resulting from it ("Contract"). This RFP relates to the Board's portfolio of investment assets for its prepaid tuition plan, which is designed to comply with Section 529 of the Internal Revenue Code. The prepaid tuition plan currently has ap-

proximately \$1.6 billion dollars in invested assets. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary Services. The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about June 1, 2006.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, March 31, 2006, after 10 a.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after 10:00 a.m. CZT on Friday, March 31, 2006. The website address is <http://esbd.tbpc.state.tx.us>.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Monday, April 17, 2006. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Monday, April 24, 2006, the Comptroller expects to post responses to questions as a revision to the Texas Marketplace notice on the issuance of this RFP. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G24), no later than 2:00 p.m. (CZT), on Monday, May 1, 2006. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to and solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board shall make the final decision on any contract award or awards resulting from this RFP. The Comptroller and the Board each reserve the right, in their sole discretion, to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - March 31, 2006, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent to propose and Questions Due - April 17, 2006, 2:00 p.m. CZT; Official Responses to Questions posted - April 24, 2006; Proposals Due - May 1, 2006, 2:00 p.m. CZT; Contract Execution - June 1, 2006, or as soon thereafter as practical; Commencement of Project Activities - June 1, 2006, or as soon thereafter as practical.

TRD-200601739

Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 22, 2006



Notice of Request for Proposals

Pursuant to §2107.003, Texas Government Code, the Comptroller of Public Accounts (Comptroller), announces its issuance of a Request for Proposals (RFP #175j) for the purpose of obtaining collection services from a qualified firm for the collection of delinquent state taxes that are required by law to be collected by the Comptroller. The successful respondent, if any, will be expected to begin performance of the contract on or before September 1, 2006.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on March 31, 2006, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also made the RFP available electronically on the Texas Marketplace after March 31, 2006, 10:00 a.m. (CZT). The address of the Texas Marketplace is (<http://esbd.tbpc.state.tx.us>).

Non-Mandatory Letters of Intent and Questions: Letters of Intent are non-mandatory. All written inquiries, questions and non-mandatory Letters of Intent must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Monday, April 10, 2006. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. Letters of Intent must be addressed to Thomas H. Hill, Assistant General Counsel, Contracts, and must be signed by an authorized representative of that entity. All responses to questions will be posted electronically on Tuesday, April 18, 2006 or as soon thereafter as practical, on the Texas Marketplace at: <http://esbd.tbpc.state.tx.us>. Non-Mandatory Letters of Intent and Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel for Contracts' Office at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Friday, April 28, 2006. Proposals received in ROOM G24 after this time and date will not be considered; respondents shall be solely responsible for verifying timely receipt of proposals and all required copies in the Issuing Office by the deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - Friday, March 31, 2006, 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - Monday, April 10, 2006, 2:00 p.m. CZT; or as soon thereafter as practical; Official Responses to Questions posted - Tuesday, April 18, 2006, Proposals

Due - Friday, April 28, 2006, 2:00 p.m. CZT; Contract Execution - June 16, 2006, or as soon thereafter as practical; Commencement of Contract Activities - June 19, 2006 for transition to official contract start on September 1, 2006.

TRD-200601748

Pamela Smith

Deputy General Counsel, Contracts

Comptroller of Public Accounts

Filed: March 22, 2006



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/27/06 - 04/02/06 is 18% for Consumer ¹/Agricultural/Commercial ² credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/27/06 - 04/02/06 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/06 - 04/30/06 is 7.50% for Consumer/Agricultural/Commercial credit thru \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 04/01/06 - 04/30/06 is 7.50% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment, or other similar purpose.

TRD-200601719

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 21, 2006



Credit Union Department

Applications to Amend Articles of Incorporation

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application for a name change was received from Texas One Community Credit Union, Houston, Texas. The credit union is proposing to change its name to TexasOne Community Credit Union.

An application was received from CTECU, Bellaire, Texas to amend its Articles of Incorporation relating to primary place of business.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200601742

Harold E. Feeney

Commissioner

Credit Union Department

Filed: March 22, 2006



Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from East Texas Professional Credit Union, Longview, Texas to expand its field of membership. The proposal would permit individuals who live or work in Angelina County, Texas, to be eligible for membership in the credit union.

An application was received from First Service Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Hilton Houston Southwest who work in or are paid from Houston, Texas, to be eligible for membership in the credit union.

An application was received from Lincoln City Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work, worship, attend school, and have businesses located within a 10-mile radius of the Lincoln City Credit Union located at 8715 Prairie View Drive, Houston, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcred.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200601741

Harold E. Feeney

Commissioner

Credit Union Department

Filed: March 22, 2006



Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) for a Merger or Consolidation - Approved

Driscoll Foundation Credit Union (Corpus Christi) and Coastal Community and Teachers Credit Union (Corpus Christi) - See *Texas Register* issue dated September 30, 2005.

Magpegasus Federal Credit Union (Midland) and Pegasus Credit Union (Dallas) - See *Texas Register* issue dated November 25, 2005.

Articles of Incorporation - 50 Years to Perpetuity -- Approved

County & Municipal Employees Credit Union, Edinburg, Texas

Alpine Community Credit Union, Alpine, Texas

Community Service Credit Union, Huntsville, Texas

THD District 13 Credit Union, Yoakum, Texas
Harlingen Area Teachers Credit Union, Harlingen, Texas
Orange County Teachers Credit Union, Orange, Texas
Temple Santa Fe Community Credit Union, Temple, Texas
First Community Credit Union of Houston, Houston, Texas
National Oilwell Varco Employees Credit Union, Houston, Texas
Brazos Valley Schools Credit Union, Katy, Texas
Memorial Hermann Credit Union, Houston, Texas
West Texas Educators Credit Union, Odessa, Texas
Lubrizol Employees Credit Union, Deer Park, Texas
TRD-200601743
Harold E. Feeney
Commissioner
Credit Union Department
Filed: March 22, 2006

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Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Galveston County WCID No. 1, Docket No. 2002-1167-MWD-E on 03/10/2006 assessing \$27,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eller Steve, Docket No. 2003-1113-PST-E on 03/10/2006 assessing \$970 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Utley, Staff Attorney, at (512) 239-0575, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Randy Sweetland, Docket No. 2003-0648-LII-E on 03/10/2006 assessing \$3,812 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator, at (512) 239-5839, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ennis West End, Inc. dba Speed Max 1, Docket No. 2004-0462-PST-E on 03/10/2006 assessing \$2,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney, at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cisco, Docket No. 2004-0856-MLM-E on 03/10/2006 assessing \$43,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator, at (512) 239-0789, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Samuel Holcomb, Docket No. 2004-1026-MLM-E on 03/10/2006 assessing \$11,668 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hurein S. Corporation dba BS Quick Stop Grocery 2, Docket No. 2004-1246-PST-E on 03/10/2006 assessing \$3,270 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney, at (817) 588-5927, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Onyx Environmental Services LLC, Docket No. 2004-1438-MLM-E on 03/10/2006 assessing \$31,920 in administrative penalties with \$6,384 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator, at (409) 899-8799, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ZAK Business Inc. dba Kountry Mart, Docket No. 2004-1622-PST-E on 03/10/2006 assessing \$5,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney, at (512) 239-1320, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E. I. Du Pont De Nemours and Company, Docket No. 2004-1661-AIR-E on 03/10/2006 assessing \$19,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Industrial Models, Inc., Docket No. 2004-1993-AIR-E on 03/10/2006 assessing \$2,300 in administrative penalties with \$460 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator, at (512) 239-4482, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Army & Air Force Exchange Service, Docket No. 2004-2001-PST-E on 03/10/2006 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Don English dba English Acres, Docket No. 2005-0238-PWS-E on 03/10/2006 assessing \$952 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Davis, Staff Attorney, at (512) 239-5487, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MK Family Limited Partnership dba Jiffy Mart 1, Docket No. 2005-0395-PST-E on 03/10/2006 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Joseph Sorrell, Docket No. 2005-0443-MWD-E on 03/10/2006 assessing \$9,250 in administrative penalties with \$1,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator, at (512) 239-4571, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Duke Energy Field Services, LP, Docket No. 2005-0489-AIR-E on 03/10/2006 assessing \$7,700 in administrative penalties with \$1,540 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator, at (512) 239-2680, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amirali Ladhani and Fatima Ladhani dba Rick's Drive In, Docket No. 2005-0618-PST-E on 03/10/2006 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator, at (361) 825-3140, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Romeo Garza dba TS Lonesome Dove Salon, Docket No. 2005-0854-PWS-E on 03/10/2006 assessing \$1,520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, at (713) 767-3672, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Arcola, Docket No. 2005-0870-MWD-E on 03/10/2006 assessing \$8,680 in administrative penalties with \$1,736 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator, at (512) 239-6589, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Stanley Lake Municipal Utility District, Docket No. 2005-0901-MWD-E on 03/10/2006 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Walnut Creek Special Utility District, Docket No. 2005-0904-PWS-E on 03/10/2006 assessing \$2,120 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator, at (817) 588-5886, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Port Elevator-Brownsville, L.C., Docket No. 2005-1011-AIR-E on 03/10/2006 assessing \$15,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator, at (817) 588-5890, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Moody, Docket No. 2005-1019-PWS-E on 03/10/2006 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Elm Ridge Water Company, Inc., Docket No. 2005-1022-PWS-E on 03/10/2006 assessing \$840 in administrative penalties with \$168 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator, at (512) 239-0667, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Heiner dba HHH Water System, Docket No. 2005-1077-PWS-E on 03/10/2006 assessing \$428 in administrative penalties with \$86 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Shamrock Refining Company, L.P., Docket No. 2005-1111-AIR-E on 03/10/2006 assessing \$4,264 in administrative penalties with \$853 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Craig Fleming, Enforcement Coordinator, at (512) 239-5806, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fernando Munoz, Jr. dba Zapata Ready Mix, Inc., Docket No. 2005-1124-AIR-E on 03/10/2006 assessing \$2,910 in administrative penalties with \$582 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator, at (512) 239-5025, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Utilities, Inc., Docket No. 2005-1125-MWD-E on 03/10/2006 assessing \$3,822 in administrative penalties with \$764 deferred.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator, at (512) 239-4493, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H&H Snacks, Inc. dba Snack and Save 2, Snack and Save 9 and So-Lo Grocery 101, Docket No. 2005-1127-PST-E on 03/10/2006 assessing \$4,935 in administrative penalties with \$987 deferred.

Information concerning any aspect of this order may be obtained by contacting Amy Burgess, Enforcement Coordinator, at (512) 239-2540, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Trinity Bay Conservation District Industrial Development Corporation, Docket No. 2005-1162-PWS-E on 03/10/2006 assessing \$2,610 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Commercial Lubricants Corporation, Docket No. 2005-1167-PST-E on 03/10/2006 assessing \$5,850 in administrative penalties with \$1,170 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator, at (361) 825-3140, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Kippur Corporation, Docket No. 2005-1203-AIR-E on 03/10/2006 assessing \$15,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator, at (361) 825-3423, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joann Hendon dba Bandera Pass Water System, Docket No. 2005-1216-PWS-E on 03/10/2006 assessing \$2,247 in administrative penalties with \$449 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bandera Independent School District, Docket No. 2005-1239-MWD-E on 03/10/2006 assessing \$5,700 in administrative penalties with \$1,140 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator, at (512) 239-4571, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Sand & Gravel Co., Inc., Docket No. 2005-1253-AIR-E on 03/10/2006 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at (210) 403-4006, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harmen Waterlander dba Linquenda Dairy, Docket No. 2005-1270-AGR-E on 03/10/2006 assessing \$8,284 in administrative penalties with \$1,657 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator, at (512) 239-4490, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G K Singh Enterprises, L.L.C. dba Express EZ Mart, Docket No. 2005-1296-PST-E on 03/10/2006 assessing \$1,600 in administrative penalties with \$320 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator, at (956) 430-6030, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rio Hondo, Docket No. 2005-1348-PWS-E on 03/10/2006 assessing \$368 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hamlin, Docket No. 2005-1391-PWS-E on 03/10/2006 assessing \$427 in administrative penalties with \$85 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator, at (512) 239-5717, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Groesbeck, Docket No. 2005-1423-PWS-E on 03/10/2006 assessing \$4,185 in administrative penalties with \$837 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lakshmi Balaji Inc. dba Lockhart Express FFP 3298, Docket No. 2005-1458-PST-E on 03/10/2006 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Meyer, Enforcement Coordinator, at (512) 239-4492, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harlingen Shrimp Farms Ltd, Docket No. 2005-1460-IWD-E on 03/10/2006 assessing \$7,000 in administrative penalties with \$1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator, at (512) 239-3308, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Air Liquide Large Industries US LP, Docket No. 2005-1475-IWD-E on 03/10/2006 assessing \$3,100 in administrative penalties with \$620 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator, at (512) 239-6589, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Baylor University, Docket No. 2005-1481-AIR-E on 03/10/2006 assessing \$1,925 in administrative penalties with \$385 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, at (512) 239-1044, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Willtex Stores L.P. dba BIG'S 301 and BIGS'S 302, Docket No. 2005-1486-PST-E on 03/10/2006 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Anita Keese, Enforcement Coordinator, at (512) 239-4467, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Camp Red Oak Springs, Docket No. 2005-1489-PWS-E on 03/10/2006 assessing \$510 in administrative penalties with \$102 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator, at (512) 239-0667, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marathon Petroleum Company LLC, Docket No. 2005-1492-AIR-E on 03/10/2006 assessing \$4,925 in administrative penalties with \$985 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator, at (713) 422-8938, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ronald Yeates, Docket No. 2005-1505-PWS-E on 03/10/2006 assessing \$2,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator, at (512) 239-5839, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Sabine Mining Company, Docket No. 2005-1527-PWS-E on 03/10/2006 assessing \$313 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator, at (956) 430-6030, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hudson Water Supply Corporation, Docket No. 2005-1528-PWS-E on 03/10/2006 assessing \$510 in administrative penalties with \$102 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator, at (210) 403-4012, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding David Starnes dba Dr. Detail, Docket No. 2005-1533-IWD-E on 03/10/2006 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator, at (713) 767-3672, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Union Tank Car Company, Docket No. 2005-1541-AIR-E on 03/10/2006 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator, at (409) 899-8799, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kwang Ho Park dba Oak Tree Texaco, Docket No. 2005-1587-PST-E on 03/10/2006 assessing \$1,600 in administrative penalties with \$320 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel Lacaille, Enforcement Coordinator, at (512) 239-1387, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Luling Mini Mart, Inc., Docket No. 2005-1591-PST-E on 03/10/2006 assessing \$5,600 in administrative penalties with \$1,120 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator, at (512) 239-5363, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sha Investment Corp. dba Diamond Shamrock 0758, Docket No. 2005-1626-PST-E on 03/10/2006 assessing \$2,400 in administrative penalties with \$480 deferred.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator, at (956) 430-6030, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Double Diamond Utilities Co, Docket No. 2005-1663-MWD-E on 03/10/2006 assessing \$6,600 in administrative penalties with \$1,320 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator, at (512) 239-1044, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Equipment Rentals Gulf, L.P., Docket No. 2005-1669-AIR-E on 03/10/2006 assessing \$1,070 in administrative penalties with \$214 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator, at (512) 239-4571, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MSC Group, Inc., Docket No. 2005-1680-PST-E on 03/10/2006 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator, at (512) 239-4571, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Public Service Company of Oklahoma, Docket No. 2005-1705-AIR-E on 03/10/2006 assessing \$1,625 in administrative penalties with \$325 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator, at (512) 239-2545, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Saidul Kabir dba Quick Shop, Docket No. 2005-1730-PST-E on 03/10/2006 assessing \$4,200 in administrative penalties with \$840 deferred.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator, at (254) 751-0335, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Limestone Marina, Inc., Docket No. 2005-1737-PWS-E on 03/10/2006 assessing \$2,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Limos, Enforcement Coordinator, at (512) 239-5839, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LH Texas OpCo, LP dba The Richardson Hotel, Docket No. 2005-1803-PST-E on 03/10/2006 assessing \$6,300 in administrative penalties with \$1,260 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator, at (512) 239-2136, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Wright Materials, Inc., Docket No. 2005-1830-MSW-E on 03/10/2006 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Howard Willoughby, Enforcement Coordinator, at (361) 825-3140, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tiffany Brick Co., LP dba Hanson Brick, Docket No. 2005-1900-AIR-E on 03/10/2006 assessing \$5,200 in administrative penalties with \$1,040 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator, at (409) 899-8799, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bandera County Fresh Water Supply District 1, Docket No. 2005-1911-PWS-E on 03/10/2006 assessing \$318 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator, at (210) 403-4006, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flagstop Enterprises Inc. dba Flagstop, Docket No. 2005-1921-PWS-E on 03/10/2006 assessing \$2,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator, at (512) 239-2505, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Millenium Petrochemicals Inc., Docket No. 2005-1303-AIR-E on 03/10/2006 assessing \$4,375 in administrative penalties with \$875 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator, at (409) 898-3838, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Rafati, Inc. dba El Paso Convenience Store, Docket No. 2002-0842-PST-E on 03/10/2006 assessing \$13,650 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Biggins, Staff Attorney, at (713) 422-8916, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

TRD-200601735

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 22, 2006



Notice of District Petition

Notices mailed March 17, 2006 through March 21, 2006:

TCEQ Internal Control No. 12212005-D05; Al Stewart, Trustee (Petitioner), filed a petition for creation of Conroe Municipal Utility District No. 1 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 344.007 acres located in Montgomery County, Texas; and (4) the proposed District is within the corporate limits of the City of Conroe, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2819-05, effective October 13, 2005, the City of Conroe, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for municipal, domestic, industrial, and commercial purposes; (2) acquire, construct, operate, and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; and (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project; and from the information available at the time, the cost of the project is estimated to be approximately \$15,900,000.

TCEQ Internal Control No. 12122005-D01; Robert M. Tiemann (Petitioner) filed a petition for creation of Lakeside Municipal Utility District No. 6 of Travis County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lienholder, Capital Farm Credit, FLCA, on the property to be included in the proposed District; (3) the proposed District will contain approximately 110.89 acres located within Travis County, Texas; and (4) the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. The Petitioner has provided the TCEQ with a certificate evidencing the consent of Capital Farm Credit, FLCA to the creation of the proposed District. The petition further states that the proposed District will: (1) design, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) design, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; (4) acquire, own, develop, construct, improve, manage, maintain, and operate parks and recreational facilities; and (5) design, construct, acquire, improve, maintain, and operate any additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the

project; and from the information available at the time, the cost of the project is estimated to be approximately \$11,710,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P. O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at (512) 239-4691. Si desea informacion en Espanol, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200601734

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 22, 2006



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 1, 2006**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional

notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 1, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Aarish Investments, Inc. dba Convenient Corner; DOCKET NUMBER: 2004-1235-PST-E; TCEQ ID NUMBERS: 68997 and RN102276839; LOCATION: 203 North Third Street, Wortham, Freestone County Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.22(a) and TWC, §5.702, by failing to pay UST fees for TCEQ Account Number 0057203U for Fiscal Year 2004 and associated late fees; PENALTY: \$1,050; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Curtis Shupak dba Village WSC; DOCKET NUMBER: 2005-1120-PWS-E; TCEQ ID NUMBER: RN101191708; LOCATION: about 3.2 miles south of Farm-to-Market Road 60 east off Park Road 57, Somerville, Burleson County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and Texas Health and Safety Code (THSC), §341.033(d), by failing to collect and submit routine monthly water samples for bacteriological analysis for the months of January, November and December 2003, and February 2004; 30 TAC §290.109(c)(3)(A)(ii), by failing to collect and submit repeat samples as required for bacteriological analysis following coliform-positive sample results for the month of September, 2003; 30 TAC §290.109(c)(2)(F), by failing to collect at least five routine samples as required for bacteriological analysis in October 2003, following a coliform-positive sample in September 2003; 30 TAC §290.122(c)(2)(A), by failing to post a public notice for failing to perform monitoring or comply with a testing procedure, for the months of January 2003, September - December 2003, and February 2004; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay delinquent Public Health Service fees and associated penalties and interest; PENALTY: \$2,010; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Gary Don Stahlheber dba Oak Hollow Mobile Home Park; DOCKET NUMBER: 2005-0655-PWS-E; TCEQ ID NUMBER: RN101453843; LOCATION: 16730 County Road 127, Trailer Number 1A, Pearland, Brazoria County, Texas; TYPE OF FACILITY: public water system RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and (g) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect and submit routine monthly bacteriological analysis and by failing to publish notice of the monitoring violation for May 2003; 30 TAC §290.109(c)(3)(A)(ii) and (g) and §290.122(c)(2)(A), by failing to collect and submit the required number of repeat bacteriological samples

following total coliform-positive sample results, and by failing to provide public notice of the monitoring violations for August and September 2003; 30 TAC §290.109(c)(2)(F) and (g) and §290.122(c)(2)(A), by failing to collect and submit five routine bacteriological samples in October 2003, following a total coliform-positive sample from September 2003, and by failing to provide public notice of the sampling violation; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay public health service fees on Account Number 90200055 for Fiscal Years 1997 - 2005; PENALTY: \$1,260; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Harvey Gillespe; DOCKET NUMBER: 2005-0628-MSW-E; TCEQ ID NUMBER: RN104452719; LOCATION: 0.5 miles east of the United States Post Office on Farm-to-Market Road 54, Enochs, Bailey County, Texas; TYPE OF FACILITY: municipal solid waste site; RULES VIOLATED: 30 TAC §328.59(b)(1), by failing to properly register with the executive director the intended use of the site for the storage of used or scrap tires or tire pieces; PENALTY: \$7,350; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Lubbock Regional Office, 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(5) COMPANY: North San Gabriel Overlook, Ltd.; DOCKET NUMBER: 2004-0361-MLM-E; TCEQ ID NUMBER: RN103184685; LOCATION: 300 San Gabriel Village Boulevard, Georgetown, Williamson County, Texas; TYPE OF FACILITY: real property; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of two Edwards Aquifer protection plans prior to commencing construction; 30 TAC §281.25(a)(4) and 40 CFR §122.26, by failing to obtain a Texas Pollutant Discharge Elimination System General Permit relating to discharges from construction activities; and TWC, §26.121(a), by failing to prevent the unauthorized discharge of sediment from the construction site; PENALTY: \$20,250; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(6) COMPANY: Pak Convenience Store Inc. dba 1 Stop 15; DOCKET NUMBER: 2004-1960-PST-E; TCEQ ID NUMBERS: 9090 and RN102402179; LOCATION: 8460 Denton Drive, Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of its petroleum USTs; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees for TCEQ Account Number 0052830U for Fiscal Year 2005; PENALTY: \$2,140; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Phongbai Xia dba Twin Lakes Water Co.; DOCKET NUMBER: 2005-0732-PWS-E; TCEQ ID NUMBERS: 2200190 and RN101453512; LOCATION: 6495 Appian Way, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §§290.109(c)(2)(A)(ii), 290.122(c)(2)(A) and 290.109(g)(4) and THSC, §341.033(d), by failing to collect and submit monthly routine water samples and by failing to post notice related to the failure to sample; 30 TAC §290.109(c)(3)(A)(ii), (2)(F), (g)(4) and §290.122(c)(2)(A), by failing to collect and submit repeat samples following a coliform-positive result and by failing to post public notice related to the failure to sample; and 30 TAC §290.109(f)(3),

(g)(4) and §290.122(b)(2)(A) and THSC, §341.031(a), by exceeding a maximum contaminant level (MCL) in June 2004, and by failing to post public notice for exceeding a MCL; PENALTY: \$1,120; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Prince A, Inc.; DOCKET NUMBER: 2005-1476-PST-E; TCEQ ID NUMBERS: 53688 and RN101550713; LOCATION: 6551 Grapevine Highway, North Richland Hills, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to monitor all tanks in a manner which would detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring) by using one or more of the release detection methods, by failing to monitor piping in the UST system in a manner which would detect a release from any portion of the piping system, by failing to test the line leak detector at least once per year for performance and operational reliability and by failing to properly calibrate and maintain the line leak detector in accordance with the manufacturer's specifications and recommended procedures; 30 TAC §334.50(d)(1)(B)(ii), by failing to reconcile detailed inventory control records at least once a month in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; TWC, §26.3475(a), by failing to ensure that all piping in its UST system that routinely conveyed regulated substances under pressure complied with TCEQ requirements for pressurized piping release detection equipment; TWC, §26.3475(c)(1), by maintaining a tank in a UST system that did not comply with TCEQ requirements for tank release detection equipment; 30 TAC §115.246(1), by failing to maintain a copy of the California Air Resources Board (CARB) Executive Orders or third-party certifications for the Stage II vapor recovery system and any related components installed at the facility; 30 TAC §115.245(2), by failing to perform verification of proper operation of the Stage II equipment in accordance with the test procedures referenced in 30 TAC §115.245(1) at least every 12 months; and THSC, §382.085(b), by causing, suffering, allowing, or permitting the emission of any air contaminant or the performance of any activity in violation of THSC, Chapter 382 or of any TCEQ rule or order; PENALTY: \$5,400; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Sentinel Waste, L.L.C.; DOCKET NUMBER: 2005-0040-MSW-E; TCEQ ID NUMBER: RN101009501; LOCATION: 9225 Highway 183 South, Austin, Travis County, Texas; TYPE OF FACILITY: municipal solid waste facility; RULES VIOLATED: 30 TAC §330.4(a), by failing to obtain proper authorization from TCEQ for the operation of a Type V processing facility; PENALTY: \$11,550; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

TRD-200601732

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: March 21, 2006



Notice of Opportunity to Comment on Settlement Agreements
of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 1, 2006, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 1, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: AJMM, Inc. dba E-Z Food Mart; DOCKET NUMBER: 2005-1553-PST-E; TCEQ ID NUMBER: RN102892213; LOCATION: 14648 Walters Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4) and Texas Water Code (TWC), §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection within three to six months after installation and at a subsequent frequency of at least once every three years; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operability reliability; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: \$7,350; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Ayers' Companies, Inc. dba County Line Truck Stop; DOCKET NUMBER: 2004-0821-PST-E; TCEQ ID NUMBERS: 16431 and RN102430907; LOCATION: 780 East Highway 80, Sunnyvale, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(3)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition as specified by the manufacturer and/or any applicable California Air Resources Board (CARB) executive order and free of any defects that would impair the effectiveness of the system; 30 TAC §115.242(5) and THSC, §382.085(b), by failing to make all necessary repairs, replacements, or adjustments to faulty equipment; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment by

performing operational tests at least once every 12 months or upon major system replacement or modification, whichever occurs first; 30 TAC §334.8(c)(5)(C), by failing to properly label the UST fill pipes according to the UST information provided to the TCEQ on the station's UST registration and self-certification form; 30 TAC §334.49(c)(4) and TWC, §26.3475(d), by failing to inspect and test the corrosion protection system for operability and adequacy of protection within three to six months after installation and once every three years thereafter; 30 TAC §334.54(d)(2), by failing to ensure that a regulated substance has been removed from a UST to a depth of less than 2.5 centimeters or 0.3% by weight of the system at full capacity in order to qualify as an out-of-service tank; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a), by failing to test a line leak detector at least once per year for performance and operational reliability; and 30 TAC §334.50(d)(9)(A)(v) and TWC, §26.3475(c), by failing to report to the TCEQ within 72 hours of the receipt of any inconclusive statistical inventory reconciliation (SIR) analysis report for USTs; PENALTY: \$8,740; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2004-0987-AIR-E; TCEQ ID NUMBERS: RN102450756 and JE0067-1; LOCATION: 1795 Burt Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: oil refinery; RULES VIOLATED: 30 TAC §§101.20(1), 113.340, and 115.352(2), 40 Code of Federal Regulations (CFR) §60.482-7(d)(1) and §63.648(a), and THSC, §382.085(b), by failing to perform the final repair within 15 days after detecting a leak for the valves with component identification numbers 1106 and 1466; 30 TAC §101.20(1) and §113.340, 40 CFR §60.482-7(c)(2) and §63.648(a), and THSC, §382.085(b), by failing to monitor three valves with component identification numbers 1106, 2147, and 0204 for two successive leak-free months after detecting a leak; 30 TAC §115.352(2) and THSC, §382.085(b), by failing to comply with the five- and 15-day requirements for leaking valves; 30 TAC §101.20(1) and §113.340, 40 CFR §60.482-7(a) and §63.648(a), and THSC, §382.085(b), by failing to perform monthly monitoring of Valve Number 27751 in May 2002; 30 TAC §101.20(1) and §113.340, 40 CFR §60.482-2(a)(1) and §63.648(a), and THSC, §382.085(b), by failing to perform monthly monitoring of two pumps, numbers 3171 and 27901; 30 TAC §101.20(3) and §116.115(b), Permit Number 19566/PSD-TX-768M1, General Conditions Number 8, and THSC, §382.085(b), by allowing unauthorized emissions of 33,183 pounds (lbs.) of sulfur dioxide (SO₂) from a Flare Gas Recovery Unit on March 18, 2003, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.201(a)(2)(H) and (b)(10) and THSC, §382.085(b), by failing to include the authorized emission limit on the initial notification and by failing to record the cause of the event on the final record for an emission event occurring on March 18, 2003; 30 TAC §101.221(a) and THSC, §382.085(b), by failing to properly operate and maintain the internal floating roof for Tank Number 2203, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.201(a)(2)(B), (D), and (H) and §101.201(b)(8) and THSC, §382.085(b), by failing to include in the initial notification the Air Account Number, the common name of the emission point where the unauthorized emissions were released, and the authorized emission limit for the facility, and by failing to include in the final notification the authorization rule or permit number and the authorized emission limit on the initial notification for an event that occurred on March 2, 2003; 30 TAC §101.20(3) and §116.115(b) and (c), Permit Number 46534/PSD-TX-992, Special Condition Number 1 and General Conditions Number 8, and THSC, §382.085(b), by allowing the unauthorized emissions of 588 lbs. of SO₂ and 12 lbs. of nitrogen oxides (NO_x) to be released to the atmosphere over a 18-minute period on March 2,

2003, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.201(a)(2)(B), (G), and (H) and §101.201(b)(8) and (10), and THSC, §382.085(b), by failing to include the Air Account Number, the compound released to the atmosphere, the authorized emissions limit, and the estimated total quantity of compounds released to the atmosphere in the initial notification, and by failing to include the authorization or the authorized limit, and correctly identify the cause of the event in the final record for an event that occurred on February 28, 2003; 30 TAC §101.20(3) and §116.115(b), Permit Number 49135, General Conditions Number 8, and Maximum Allowable Emissions Rate Table (MAERT), and THSC, §382.085(b), by allowing the unauthorized emissions of 5,234 lbs. of SO₂ into the atmosphere at the Low Pressure Flare and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.201(a)(2)(B) and (H) and §101.201(b)(8) and THSC, §382.085(b), by failing to include the Air Account Number for the regulated entity and the authorized emissions limit in the initial notifications for emission events, and by failing to include the preconstruction authorization number and the authorized emission limit in the final record received for emission events occurring on January 27, 2003, and February 16, 20, and 26, 2003; 30 TAC §101.20(3) and §116.115(b), Permit Number 19566/PSD-TX-768M1, General Conditions Number 8, and THSC, §382.085(b), by allowing the unauthorized release of 792 lbs. of SO₂ from the Low Pressure Flare during an emission event that occurred on February 26, 2003, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.20(3) and §116.115(b), Permit Number 19566/PSD-TX-768M1, General Conditions Number 8, and THSC, §382.085(b), by allowing the unauthorized emission of 4,413 lbs. of SO₂ and 21 lbs. of NO_x from the Coker Flare during an emission event occurring on February 20, 2003, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.20(3) and §116.115(b), Permit Number 19566/PSD-TX-768M1, General Conditions Number 8, and THSC, §382.085(b), by allowing the unauthorized emission of 11 lbs. of NO_x and 4,511 lbs. of SO₂ to enter the atmosphere during a lube oil turbine to lube oil motor switch from the PtR-4 Booster Compressor on January 27, 2003, and 30 TAC §101.222 by failing to meet the demonstrations; 30 TAC §101.20(3) and §116.115(b), Permit Number 49135, General Conditions Number 8 and MAERT, and THSC, §382.085(b), by allowing the unauthorized release of 3,780 lbs. of SO₂, 16 lbs. of NO_x, and 54 lbs. of hydrogen sulfide (H₂S) from the Low Pressure Flare, High Pressure Flare, and FCC Flare, on January 13-14, 2003, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.20(3) and §116.115(b), Permit Number 19566/PSD-TX-768M1, General Conditions Number 8, and THSC, §382.085(b), by allowing the unauthorized emission of 8,847 lbs. SO₂, and 315.5 lbs. of NO_x from the PtR-4 Unit and Low Pressure Flare, on February 16-17, 2003, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.201(a)(2)(B), and (H) and §101.201(b)(8) and (9) and THSC, §382.085(b), by failing to include the Air Account Number for the regulated entity and the authorized emissions limit in the initial notification for emissions events, and by failing to include the preconstruction authorization number, the authorized emission limit, and the required basis used for determining the quantity of air contaminants emitted in the final record for emissions events occurring on September 18, 2002, October 4, 2002, October 30, 2002, and November 23, 2002; 30 TAC §101.20(3) and §116.115(b), Permit Number 49135, General Conditions Number 8 and MAERT, and THSC, §382.085(b), by allowing the unauthorized release of 7,961 lbs. of SO₂, 154 lbs. of NO_x, and 144 lbs. of H₂S from the Low Pressure Flare, High Pressure Flare, and FCC Flare on November 23, 2002, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.201(b)(8) and (9) and THSC, §382.085(b), by failing to properly record and maintain the final record of an emissions event by not including the permit authorization number, the authorized

emission rate, and the basis for determining the quantity of air contaminants emitted for emission events occurring on October 29, 2002 and November 17, 2002; 30 TAC §101.20(3) and §116.115(b), Permit Number 49135, General Conditions Number 8 and MAERT, and THSC, §382.085(b), by allowing the unauthorized emission of eight lbs. of NO_x to enter the atmosphere from the Low Pressure, High Pressure Flare, and FCC Flare during an instrumentation malfunction that occurred on November 17, 2002, and by allowing the unauthorized emission of 41 lbs. of NO_x and 2,074 lbs. of SO₂ to enter the atmosphere from the Low Pressure, High Pressure, and FCC Flares during an instrumentation malfunction that occurred on October 30, 2002, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.221(a) and THSC, §382.085(b), by allowing the unauthorized emissions of 460 lbs. of benzene, 2,042 lbs. of toluene, and 2,800 lbs. of xylene from Tank 1365 to enter the atmosphere during a tank roof drain malfunction that occurred on October 29, 2002, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.201(a)(2)(B), (F) and (H) and §101.201(b)(8) and (9) and THSC, §382.085(b), by failing to include in the initial notification the Air Account Number, the authorized emissions limit, and the estimated duration; 30 TAC §101.1, by failing to include the preconstruction authorization number governing the facility involved in the emissions event and the authorized emission limit of the compounds released to atmosphere and submitting the initial notification without including the basis used for determining the quantity of air contaminants emitted in the definition of reportable quantity for an event that occurred on October 26, 2003; 30 TAC §101.20(3) and §116.115(b), Permit Number 19566/PSD-TX-768M1, General Conditions Number 8, and THSC, §382.085(b), by allowing the unauthorized emission of 1442 lbs. of NO_x to enter the atmosphere from the High Pressure Flare during a motor operated valve and discharge check valve malfunction that occurred on October 26, 2002, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.20(3) and §116.115(b), Permit Number 49135, General Conditions Number 8 and MAERT, and THSC, §382.085(b), by allowing unauthorized emissions of 44 lbs. of NO_x and 2,326 lbs. of SO₂ to enter the atmosphere from the Low Pressure Flare when the Flare Gas Recovery Compressor (FGRC) diverted load to the Low Pressure Flare on October 30, 2002, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.20(3) and §116.115(b), Permit Number 49135, General Conditions Number 8 and MAERT, and THSC, §382.085(b), by allowing the unauthorized emissions of 76 lbs. of NO_x and 1,619 lbs. of SO₂ to enter the atmosphere from the Low Pressure, High Pressure, and FCC Flares when the FGRC diverted a load to the Flares due to the Knock-Out Drum high level shutting down the LP Compressor Unit on October 4-5, 2002, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §101.20(3) and §116.115(b), Permit Number 49135, General Conditions Number 8 and MAERT, and THSC, §382.085(b), by allowing the unauthorized emissions of 20 lbs. of NO_x and 947 lbs. of SO₂ to enter the atmosphere from the Low Pressure Flare during an instrumentation malfunction that occurred on September 18, 2002, and 30 TAC §101.222, by failing to meet the demonstrations; 30 TAC §116.110(a) and THSC, §382.085(b), by allowing the unauthorized emission of 240 lbs. of Halon gas (Bromomethane) to enter the atmosphere from the Satellite Instrumentation Building during a control circuit malfunction which occurred on June 27, 2002, and 30 TAC §101.11(a)(2) (in effect at the time of the event), by failing to meet the demonstrations; 30 TAC §101.201(b)(7) and (8) and THSC, §382.085(b), by failing to properly report the final record of an emissions event by not including the compound descriptive type and the estimated total quantities for carbon monoxide (CO), volatile organic compounds (VOC), and H₂S involved in an October 22, 2003 emissions event; 30 TAC §101.20(3) and §116.115(b), Permit Number 49135, General Conditions Number

8 and MAERT, and THSC, §382.085(b), by allowing the unauthorized emissions of 55.4 lbs. of NOx, 1,529 lbs. of SO₂, 400.44 lbs. of CO, 160.04 lbs. of VOC, and 16.59 lbs. of H₂S from the FCC flare on October 22, 2003, and 30 TAC §101.222, by failing to meet the demonstrations; PENALTY: \$80,444; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Feroz Ali Jivani dba MC Food Store 2; DOCKET NUMBER: 2004-1666-PST-E; TCEQ ID NUMBERS: 24403 and RN103101572; LOCATION: 9440 Louetta Road, Spring, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance, for the year 2002, for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of three petroleum USTs; PENALTY: \$3,150; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Huntsman Petrochemical Corporation; DOCKET NUMBER: 2005-1774-AIR-E; TCEQ ID NUMBER: RN100217389; LOCATION: 4241 Savannah Avenue, Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §116.715(a), New Source Review (NSR) Flexible Air Permit Numbers 16989 and PSD-TX-794, Special Condition Number 1, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: \$4,550; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Jeffy's, Inc.; DOCKET NUMBER: 2004-1253-PST-E; TCEQ ID NUMBERS: 26689 and RN102262730; LOCATION: 8015 Interstate 10 East, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs for the one year period proceeding November 7, 2002; PENALTY: \$4,280; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Jesus Sanchez Acosta; DOCKET NUMBER: 2005-0543-MSW-E; TCEQ ID NUMBERS: 445150104 and RN104361936; LOCATION: Block 90, Lot 7, on North Third Street, approximately two miles north of the intersection of North Third Street and Monte Cristo Road, Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: THSC, §361.061 and §361.086 and 30 TAC §330.5(a), by failing to prevent the disposal of municipal solid waste at an unauthorized site; PENALTY: \$4,200; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: John Daugherty dba John Daugherty Homes; DOCKET NUMBER: 2005-1756-WQ-E; TCEQ ID NUMBER: RN104666458; LOCATION: 5405 Stone Lake Drive, Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: home building business; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR

§122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$3,150; STAFF ATTORNEY: Shana Horton, Litigation Division, MC 175, (512) 239-1088; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(9) COMPANY: Lanxess Corporation; DOCKET NUMBER: 2005-0006-AIR-E; TCEQ ID NUMBERS: OC0004P and RN100825363; LOCATION: 4647 Farm-to-Market Road 1006, Orange, Orange County, Texas; TYPE OF FACILITY: synthetic rubber manufacturing plant; RULES VIOLATED: 30 TAC §§116.110(a), 116.115(b)(2)(F) and (c), 122.143(4), NSR Air Permit Number 22508/PSD-TX874, Special Condition Number 1, GOP Number O-01391, Special Condition Number 7A, and THSC, §382.085(b), by failing to prevent unauthorized emissions from being released at the Cobalt Butadiene Rubber Unit, and the Propylene Bullet Tank and by failing to maintain an emission rate below the permitted allowable emission limit; PENALTY: \$18,630; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: McCulloch County; DOCKET NUMBER: 2004-0827-MLM-E; TCEQ ID NUMBERS: F1759 and RN104219928; LOCATION: 2941 County Road 100, 1.75 miles southwest of Brady, McCulloch County, Texas; TYPE OF FACILITY: scrap metal recycle center, lead acid battery collection center, used oil collection center, used oil filter collection center, used tire collection center, and an equipment and material storage area; RULES VIOLATED: 30 TAC §111.201 by failing to comply with the outdoor burning requirements; 30 TAC §328.13(a) and §335.4, and TWC, §26.121(c), by failing to manage municipal hazardous waste in a manner that is protective of public health and welfare and failing to prevent the discharge or imminent threat of discharge into or adjacent to waters in the state; TWC, §26.266(a), failing to remediate petroleum hydrocarbon spills and discharges to the environment; 30 TAC §335.431(c), THSC, §361.451(a), and 40 CFR §268.40, failing to meet the treatment standards for lead prior to covering waste ash in a land based unit; 30 TAC §335.2(a), by failing to obtain authorization prior to storing, processing or disposing of municipal hazardous waste; 30 TAC §335.9(a)(1), by failing to make available to TCEQ personnel records to document hazardous waste determinations for wastes located at the site; 30 TAC §335.9(a)(1), by failing to keep records of waste lead-acid batteries disposed of at the site; 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(c), by failing to provide a release detection system for a petroleum UST system; 30 TAC §334.49(a) and TWC, §26.3475(c), by failing to provide corrosion protection for the petroleum UST system; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by the accidental releases from the operation of the petroleum UST; 30 TAC §334.7(a)(1) and §334.127(a)(1), by failing to register a UST and an aboveground storage tank with the commission; 30 TAC §328.23(a) and (b) and 40 CFR §279.22(b), by failing to store, process, or dispose of used oil filters in a manner so as to not cause a discharge of oil into the environment; 30 TAC §328.25(c), by failing to have copies of bills of lading available for commission personnel to inspect at any reasonable time; 30 TAC §324.4, by failing to ensure that used oil is stored, collected, burned, or discharged in a manner that does not endanger the public health or the environment; 30 TAC §324.7(3)(A), (B) and (E), by failing to comply with the requirements of a Used Oil Collection Center; 40 CFR §279.22(c)(1), by failing to label or clearly mark the words "Used Oil" on containers used to store used oil; and 30 TAC §334.55(a)(3), by failing to ensure that the permanent removal of a petroleum UST was conducted by qualified personnel;

PENALTY: \$31,250; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(11) COMPANY: Mehdi Maredia dba AA & RL Kountry Store; DOCKET NUMBER: 2005-1578-PST-E; TCEQ ID NUMBERS: 46001 and RN102044468; LOCATION: 16194 North State Highway 6, Calvert, Robertson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$4,200; STAFF ATTORNEY: Robert Mosley, Litigation Division MC 175, (512) 239-0627; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Mirage Stop, Inc.; DOCKET NUMBER: 2003-1443-MWD-E; TCEQ ID NUMBER: RN101520344; LOCATION: 17141 I-10 East, Channelview, Harris County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1) and 319.5(b), TCEQ Permit Number 0003517000, Final Effluent Limitations and Monitoring Requirements, 1, and TWC, §26.121(e), by failing to monitor flow when required for Outfall Number 002 from April 1, 2002 - June 15, 2003; 30 TAC §305.125(1) and §317.7(e), TCEQ Permit Number 0003517000, Operational Requirements 1, and TWC, §26.121(e), by failing to repair the fences surrounding the wastewater treatment plant and the on-site lift station; 30 TAC §305.125(1) and §319.5(b), TCEQ Permit Number 0003517000, Final Effluent Limitations and Monitoring Requirements, 1, and TWC, §26.121(e), by failing to monitor flow when required for Outfall Number 001 at the frequency required by the permit; and 30 TAC §305.125(1) and (5), TCEQ Permit Number 0003517000, Operational Requirements 1, and TWC, §26.121(e), by failing to properly operate and maintain the treatment facility; PENALTY: \$10,900; STAFF ATTORNEY: Courtney St. Julian, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Ron Edwards dba Tawakoni Stop II; DOCKET NUMBER: 2005-1378-PST-E; TCEQ ID NUMBERS: 55512 and RN102228111; LOCATION: 2450 Farm-to-Market Road 47, Point, Rains County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$2,565; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200601731

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: March 21, 2006

Notice of Proposal to Substitute Certain Transportation Control Measures Contained in the Houston-Galveston Area Council State Implementation Plan

The Texas Commission on Environmental Quality (commission), in coordination with the Houston-Galveston Area Council (H-GAC), serving as the Metropolitan Planning Organization (MPO) for the Houston/Galveston/Brazoria metropolitan area (HGB), proposes to substitute certain transportation control measures (TCMs) contained in the HGB state implementation plan (SIP). As provided by commission rules, the commission and the H-GAC have initiated a process to approve substitute TCMs for the HGB SIP. Documentation regarding each proposed substitute TCM is available for public review at the commission Web site located at http://www.tceq.state.tx.us/implementation/air/sip/tcm_hgb.html. Documentation may also be obtained from Shelley Whitworth, Program Manager, Houston-Galveston Area Council, P. O. Box 22777, Houston, Texas 77227-2777, or at (713) 499-6695.

The commission will hold a public hearing on this proposal on April 20, 2006, 12:00 p.m., at the Houston-Galveston Area Council, 3555 Timmons, Conference Room B, Houston, Texas. The hearing will be structured for the receipt of oral and/or written comments from interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Shelley Whitworth at (713) 499-6695. Requests for special accommodations should be made as far in advance as possible. Comments may be submitted to Koy Howard, Texas Commission on Environmental Quality, Chief Engineers Office, MC 206, P. O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-5687. All comments should reference Transportation Control Measure Substitution for the HGB area. Comments must be received by 5:00 p.m., April 7, 2006. For further information, please contact Mr. Howard of the Environmental Planning and Implementation Division at (512) 239-2306.

TRD-200601720

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: March 21, 2006

Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on March 21, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Manuel Manriquez dba M&A Oil Co.; SOAH Docket No. 582-05-8335; TCEQ Docket No. 2004-1315-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Manuel Manriquez dba M&A Oil Co. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P. O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200601736



Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 1, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P. O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 1, 2006**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: 3M Company; DOCKET NUMBER: 2005-1783-AIR-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN100218692; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: plant; RULE VIOLATED: 30 TAC §116.115(c) and §101.20(3), New Source Review Permit Number 9904/PSD-TX-674M-1, and THSC, §382.05(b), by failing to meet permitted emissions limits for carbon monoxide; PENALTY: \$4,360; ENFORCEMENT COORDINATOR: Amy Burgess, (512) 239-2540; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: William DeWitt dba 45 Kwik Stop; DOCKET NUMBER: 2005-1377-PST-E; IDENTIFIER: RN102235611; LOCATION: Rice, Navarro County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; and 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: A J & P Investors, Inc. dba Poolville One Stop; DOCKET NUMBER: 2005-1929-PST-E; IDENTIFIER: RN101557841; LOCATION: Poolville, Parker County, Texas; TYPE

OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.45(e)(2)(D), by failing to ensure all fill pipes are equipped with a removable or permanent factory-constructed drop tube; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to equip each tank with a valve or other appropriate device designed to either automatically shut off the flow or restrict the flow of regulated substances into the tank; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; and 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases, by failing to provide proper release detection, and by failing to test the line leak detectors; PENALTY: \$6,336; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Bell County Water Control & Improvement District 1; DOCKET NUMBER: 2005-2002-PWS-E; IDENTIFIER: RN101223956; LOCATION: Killeen, Bell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(c)(3) and (4) and (e), by failing to provide a proper roof slope on all water storage tanks, by failing to provide an overflow pipe, by failing to equip the ground storage tank with a liquid level indicator, and by failing to provide an intruder-resistant fence for the ground storage tanks; 30 TAC §290.46(f)(3)(B)(v), by failing to file and make available for commission review calibration records for the flow meters; and 30 TAC §290.44(d)(1), by failing to install an air release device; PENALTY: \$2,450; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Bridgeport Utilities, L.L.C.; DOCKET NUMBER: 2006-0037-MWD-E; IDENTIFIER: RN102342821; LOCATION: Richland, Navarro County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013528001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for ammonia nitrogen (NH₃), dissolved oxygen (DO), and five-day carbonaceous biochemical oxygen demand; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Bulk Services Transportation, Inc.; DOCKET NUMBER: 2005-1886-IHW-E; IDENTIFIER: RN104712591; LOCATION: Kopperl, Bosque County, Texas; TYPE OF FACILITY: trucking company; RULE VIOLATED: 30 TAC §335.2(b) and §335.4, by failing to properly dispose of approximately 10,000 pounds of industrial solid waste; and 30 TAC §312.9(c) and the Code, §5.702, by failing to pay outstanding sludge hauler fees; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Cemex Construction Materials, L.P.; DOCKET NUMBER: 2005-1311-MLM-E; IDENTIFIER: RN102437274; LOCATION: San Antonio, Comal County, Texas; TYPE OF FACILITY: limestone quarry; RULE VIOLATED: 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000, and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to maintain at the facility or have readily available for review a copy of the storm water pollution prevention plan; 30 TAC §305.42(a) and the Code, §26.121(a), by failing to obtain authorization prior to discharging process water into retention ponds; and the Code, §26.121(a), by failing to prevent the unauthorized discharge of sediment and sand; PENALTY: \$10,080; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100;

REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Chevron Phillips Chemical Company, L.P.; DOCKET NUMBER: 2005-1769-AIR-E; IDENTIFIER: RN100215615; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §§101.20(1), 115.352(4), 116.115(c)(1), and 122.143(4), Federal Operating Permit (FOP) Number O-01310, New Source Review (NSR) Permit Number 4140A, and THSC, §382.085(b), by failing to install a second valve, a blind flange, or a tightly-fitting plug or cap on 31 open ended lines; 30 TAC §§101.20(1), 116.115(c)(1), and 122.143(4), 40 CFR §60.18(c)(2), FOP Permit Number O-01310, NSR Permit Number 4140A, and THSC, §382.085(b), by failing to maintain a pilot flame during flare operation; 30 TAC §§101.20(1), 122.143(4), and 122.145(2)(A), 40 CFR §60.565(k)(4), FOP Permit Number O-01310, and THSC, §382.085(b), by failing to submit a timely deviation report; and 30 TAC §101.20(1) and §122.143(4), 40 CFR §60.482-7(a), FOP Permit Number O-01310, and THSC, §382.085(b), by failing to conduct fugitive monitoring; PENALTY: \$25,500; ENFORCEMENT COORDINATOR: Miriam Hall, (903) 535-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: City of Dodd City; DOCKET NUMBER: 2005-0740-MWD-E; IDENTIFIER: RN101608867; LOCATION: Dodd City, Fannin County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10538001, and the Code, §26.121(a), by failing to maintain compliance with the permitted effluent limits for five-day biochemical oxygen demand (BOD5), total suspended solids (TSS), DO, pH, and fecal coliform bacteria; and 30 TAC §312.123 and TPDES Permit Number 10538001, by failing to submit an annual sludge report; PENALTY: \$12,280; ENFORCEMENT COORDINATOR: Sandy VanCleave, (903) 535-0667; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Dublin; DOCKET NUMBER: 2004-0573-MWD-E; IDENTIFIER: RN101918308, TPDES Permit Number WQ0010405001; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010405001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for pH and BOD5; PENALTY: \$7,400; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: Enterprise Products Operating L.P.; DOCKET NUMBER: 2005-1905-AIR-E; IDENTIFIER: RN102323268; LOCATION: Mont Belvieu, Chambers County, Texas; TYPE OF FACILITY: natural gas liquids and industrial organic chemicals; RULE VIOLATED: 30 TAC §116.115(c), Air New Source Permit Numbers 20698 and 5581, and THSC, §382.085(b), by failing to operate within the permitted limits of Air New Source Permit Numbers 20698 and 5581; PENALTY: \$9,480; ENFORCEMENT COORDINATOR: Amy Burgess, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Enterprise Products Operating L.P.; DOCKET NUMBER: 2006-0100-AIR-E; IDENTIFIER: RN102580834; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: loading operations dock; RULE VIOLATED: THSC, §382.085(a), by failing to prevent unauthorized emissions of 170 pounds (lbs.) of carbon monoxide, 84 lbs. of nitrogen dioxide, and 6,891 lbs. of propane; and 30 TAC §21.4 and the Code, §5.702, by failing to pay the late fee for consolidated water quality fees; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Scott Barnett, (713) 767-3500;

REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: GL James Investments, L.L.C. dba Country Boy Store; DOCKET NUMBER: 2005-2014-PST-E; IDENTIFIER: RN101540854; LOCATION: McKinney, Collin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to have the cathodic protection system tested by a qualified corrosion specialist; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$5,760; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Harris County Municipal Utility District Number 8; DOCKET NUMBER: 2004-0970-WQ-E; IDENTIFIER: TPDES Permit Number 11727-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11727-001, and the Code, §26.121(a), by failing to comply with the permitted limits for TSS and Total NH3; PENALTY: \$6,280; ENFORCEMENT COORDINATOR: Amy Burgess, (512) 239-2540; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: City of Hillsboro; DOCKET NUMBER: 2003-0036-MWD-E; IDENTIFIER: RN102844180; LOCATION: Hillsboro, Hill County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10630-001, and the Code, §26.121(a), by failing to comply with the permitted limits for NH3, DO, total residual chlorine, TSS, and BOD5; PENALTY: \$15,900; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: City of Lawn; DOCKET NUMBER: 2005-1136-PWS-E; IDENTIFIER: RN101406916; LOCATION: Lawn, Taylor County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the maximum contaminant level (MCL) for trihalomethanes (TTHM) and haloacetic acid; PENALTY: \$895; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(17) COMPANY: Lyondell Chemical Company; DOCKET NUMBER: 2005-2012-AIR-E; IDENTIFIER: RN102523107; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 9395, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Maverick Tube, L.P.; DOCKET NUMBER: 2005-2049-AIR-E; IDENTIFIER: RN100543131; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: fabricated and fittings plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit a complete annual compliance certification; PENALTY: \$4,060; ENFORCEMENT COORDINATOR: Sherronda Martin, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Monument Inn, Inc.; DOCKET NUMBER: 2006-0058-MWD-E; IDENTIFIER: RN101527737; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater

treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13666001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for DO, TSS, flow, and chlorine; PENALTY: \$5,160; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Petroleum Wholesale, L.P. dba Sunmart 153 and Sunmart 289; DOCKET NUMBER: 2005-2050-PST-E; IDENTIFIER: RN101932127 and RN102060324; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,936; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Regent Coach Line, Limited; DOCKET NUMBER: 2005-2036-MLM-E IDENTIFIER: RN10372752; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: bus charter service; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with charter bus activities; and 30 TAC §330.5(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: Len D. Jordan dba Sail Haven; DOCKET NUMBER: 2005-2063-PWS-E; IDENTIFIER: RN101213452; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: \$323; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(23) COMPANY: Talley Water Supply Corporation; DOCKET NUMBER: 2005-2021-PWS-E; IDENTIFIER: RN101221646; LOCATION: Marshall, Harrison County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL for TTHM; PENALTY: \$313; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(24) COMPANY: Town of Mustang; DOCKET NUMBER: 2005-1503-MWD-E; IDENTIFIER: RN102807864; LOCATION: Mustang, Navarro County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11516001, and the Code, §26.121(a), by failing to comply with permit effluent limits for TSS, BOD5, and DO and by failing to submit monitoring results at the intervals specified in the permit; PENALTY: \$10,947; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(25) COMPANY: Gil Villa dba Villa Dairy; DOCKET NUMBER: 2005-1969-AGR-E; IDENTIFIER: RN104772207; LOCATION: Ballinger, Runnels County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.47(b)(3)(A), by failing to beneficially use wastewater and manure in a manner that will protect surface and groundwater quality; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200601721

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: March 21, 2006

State Board of Examiners for Speech-Language Pathology and Audiology

Correction of Error

The Department of State Health Services submitted on behalf of the State Board of Examiners for Speech-Language Pathology and Audiology the adoption of 22 TAC Chapter 741. The rules were published in the March 17, 2006, issue of the *Texas Register* (31 TexReg 2160).

A graphic (Figure: 22 TAC §741.103(l)) was submitted with changes and published at 31 TexReg 2214. Due to an error in the figure as submitted, the left column title published as "Octave Band Internal" should read "Octave Band Interval" as in the proposed rules.

Figure: 22 TAC §741.103(l)

Octave band interval	Supra-aural Earphone	Insert Earphone
125 Hz	39 dB	67 dB
250 Hz	25 dB	53 dB
500 Hz	21 dB	50 dB
1000 Hz	26 dB	47 dB
2000 Hz	34 dB	49 dB
4000 Hz	37 dB	50 dB
8000 Hz	37 dB	56 dB

TRD-200601709

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit Transmittal Number TX 06-021, Amendment Number 739, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The amendment is effective September 1, 2006.

Amendment Number 739 provides for supplemental payments for Medicaid inpatient hospital services provided by privately owned children's hospitals in the State of Texas. These supplemental payments will not exceed the difference between the total annual Medicaid payments and the federal upper payment limit (UPL) established in 42 Code of Federal Regulations (CFR) 447.272 for these facilities. UPL is "a reasonable estimate of the amount that would be paid for the services furnished by a group of facilities under Medicare payment principles." Amendment 739 will ensure that Medicaid payments for inpatient hospital services provided by these facilities are commensurate with the Medicare payments and/or payment principles.

The amendment is expected to increase State expenditures and the amount of federal matching funds to the State. For State Fiscal Year 2007, the amendment is estimated to result in increased aggregate State expenditures of \$64,284,029, with increased federal matching funds of \$39,284,029.

To obtain copies of the proposed amendment, interested parties may contact Arnulfo Gomez by telephone at (512) 491-1166 or by e-mail at arnulfo.gomez@hhsc.state.tx.us. Copies of the amendment also will be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200601737

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: March 22, 2006

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number TX 06-017, Amendment Number 735, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The amendment is effective as of January 1, 2006.

The Centers for Medicare and Medicaid Services (CMS) has updated its state plan forms to include information concerning the new Medicare prescription drug benefits program created under Title 1 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Amendment 735 complies with a request by CMS to update the state plan for the Primary Care Case Management (PCCM) program using the revised forms. This amendment adds language to

the state plan assuring CMS that the state will comply with all applicable requirements of the MMA.

The State estimates that the amendment will not result in a fiscal impact to state or federal funds over the next two fiscal years.

To obtain copies of the amendment, interested parties may contact Gilbert Estrada, Policy Analyst, Medicaid/CHIP Division, by telephone at (512) 491-1331 or by e-mail at Gilbert.Estrada@hhsc.state.tx.us.

TRD-200601754

Steve Aragon

Chief Counsel

Texas Health and Human Services Commission

Filed: March 22, 2006

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Public Notice Statement

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. This amendment will revise the Reimbursement Methodology for Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) to allow for a mid-year partial settlement of the interim rate and a corresponding adjustment to the interim rate for the remainder of the state fiscal year to account for actual increases in costs to operate state operated facilities that were not anticipated in the initial interim rate. HHSC is taking this action so that adequate funds are available to serve clients in these facilities. This action will allow the state to increase necessary federal funding closer to when costs are incurred rather than waiting for the annual settlement calculation to make these adjustments. The annual settlement will continue to be conducted.

The proposed amendment is to be effective April 1, 2006 with the settlement calculation and interim rate adjustment made for the entire state fiscal year. The amendment is expected to increase federal matching funds to the state for the ICF/MR program as follows:

FY 2006: \$22,805,048

To obtain copies of the proposed amendment, interested parties may contact Carolyn Pratt by mail at Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200 or by telephone at (512) 491-1359. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200601733

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: March 22, 2006

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Asuragen Inc	L05977	Austin	00	02/28/06
Navasota	St Joseph Regional Health Center DBA Grimes St Joseph Health Center	L05968	Navasota	00	03/10/06
Throughout TX	QAL-TEK Associates LLC	L05965	Austin	00	03/01/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Amarillo	Amarillo Medical Specialists LLP	L05525	Amarillo	06	02/27/06
Arlington	The University of Texas at Arlington	L00248	Arlington	44	02/28/06
Arlington	Healthsouth Diagnostic Centers of Texas LP DBA Healthsouth Diagnostic Center of Arlington	L05033	Arlington	21	03/13/06
Austin	ARA Imaging	L05862	Austin	08	03/06/06
Austin	Austin Heart PA	L04623	Austin	34	03/06/06
Austin	Austin Radiological Association	L00545	Austin	118	03/06/06
Austin	PPD Development Inc DBA PPD Development	L04348	Austin	17	03/10/06
Austin	QAL-TEK Associates LLC	L05965	Austin	01	03/03/06
Austin	Simona Scumpia MD PA DBA Austin Thyroid & Endocrinology	L05579	Austin	02	03/09/06
Austin	Columbia/St Davids Healthcare System LP DBA St Davids Medical Center	L05856	Austin	04	03/13/06
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	44	03/02/06
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	46	03/13/06
Beaumont	Advanced Cardiovascular Specialists LLP	L05512	Beaumont	07	03/03/06
Beaumont	Applied Standards Inspection Inc	L03072	Beaumont	93	03/01/06
Beaumont	Christus Health Southeast Texas DBA Christus Hospital-St Elizabeth	L00269	Beaumont	103	03/10/06
Beaumont	Health South Diagnostic Center of Texas LP DBA Health South Diagnostic Center of Beaumont	L03888	Beaumont	34	03/10/06
Beaumont	R Leldon Sweet MD PA DBA Outpatient Cardiovascular Services	L05029	Beaumont	09	03/10/06
Beeville	Christus Spohn Health System Corporation DBA Christus Spohn Hospital Beeville	L04510	Beeville	22	03/10/06
Big Spring	Big Spring Hospital Corporation DBA Scenic Mountain Medical Center	L00763	Big Spring	50	03/10/06
Big Spring	Price Construction Inc	L05205	Big Spring	01	03/13/06
Bishop	Ticonia Polymers Inc	L02441	Bishop	43	03/09/06
Bonham	Attentus Bonham LP DBA Northeast Medical Center	L03331	Bonham	28	02/28/06
Borger	Hutchinson County Hospital District DBA Golden Plains Community Hospital	L04369	Borger	09	03/02/06
Brenham	Trinity Community Medical CTR of Brenham	L03419	Brenham	21	03/06/06

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Brenham	Trinity Community Medical CTR of Brenham	L03419	Brenham	22	03/06/06
Bryan	Texas Municipal Power Agency Gibbons Creek Steam Electric	L02913	Bryan	19	03/09/06
Carrollton	Tenet Health System Hospitals Dallas Inc DBA Trinity Medical Center	L03765	Carrollton	49	03/10/06
Cleburne	Johns Manville International Inc	L01482	Cleburne	18	03/07/06
College Station	College Station Hospital LP DBA College Station Medical Center	L02559	College Station	61	03/01/06
Conroe	CHCA Conroe LP DBA Conroe Regional Medical Center	L01769	Conroe	66	03/07/06
Corpus Christi	Equistar Chemicals LP Corpus Christi Plant	L02447	Corpus Christi	17	03/07/06
Corpus Christi	Narain D Mangla MD PA	L05630	Corpus Christi	03	03/13/06
Crockett	East Texas Medical Center Crockett	L01411	Crockett	28	03/14/06
Dallas	Baylor Radiosurgery Center DBA Baylor University Medical Center	L05842	Dallas	05	03/01/06
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	87	03/07/06
Dallas	Cardiology & Interventional Vascular Associates	L05412	Dallas	04	03/13/06
Deer Park	AKZO Nobel Polymer Chemicals LLC	L04372	Deer Park	11	02/24/06
Deer Park	Hexion Specialty Chemicals Inc	L05323	Deer Park	03	03/08/06
Denison	Texoma Heart Group	L05208	Denison	09	03/10/06
Denton	Metro North Clinic	L05235	Denton	09	03/06/06
El Paso	El Paso Healthcare System LTD DBA Las Palmas Medical Center	L02715	El Paso	68	03/06/06
El Paso	Louis M Alpern MD	L02928	El Paso	05	03/06/06
El Paso	R E Thomason General Hospital	L00502	El Paso	59	03/09/06
El Paso	Tenet Hospitals Limited DBA Sierra Medical Center	L02365	El Paso	60	03/06/06
El Paso	Tenet Hospitals Limited DBA Sierra Medical Center	L04758	El Paso	21	03/01/06
Fort Worth	Alcon Laboratories Inc William C Conner Research Center	L01281	Fort Worth	41	03/06/06
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	60	02/28/06
Fort Worth	Precision Energy Services Inc	L00747	Fort Worth	72	03/02/06
Galena Park	United States Gypsum Company	L03896	Galena Park	08	03/08/06
Groves	Renaissance Hospitals Inc DBA Renaissance Hospital	L02091	Groves	29	03/09/06
Harlingen	Valley Eye Center PA	L02639	Harlingen	10	03/09/06
Houston	Allied Testing Laboratories	L00880	Houston	41	03/02/06
Houston	Baker Hughes Oilfield Operations Inc DBA Baker Atlas Houston Technology CTR	L04452	Houston	43	03/02/06
Houston	Cardiology Center of Houston PA	L05400	Houston	04	03/07/06
Houston	CHCA West Houston LP DBA West Houston Medical Center	L02224	Houston	68	03/01/06
Houston	GB Biosciences Corporation	L03521	Houston	20	03/08/06
Houston	Petnet Houston LLC DBA Petnet Houston LLC	L05542	Houston	09	02/27/06
Houston	Rice Nuclear Diagnostics	L05830	Houston	07	03/03/06
Houston	River Oaks Imaging & Diagnostic LP DBA River Oaks Imaging & Diagnostic	L05493	Houston	06	03/06/06

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	River Oaks Imaging & Diagnostic LP DBA River Oaks Imaging & Diagnostic	L04342	Houston	51	03/10/06
Houston	ST Lukes Episcopal Health System Corp DBA ST Lukes Episcopal Health System & Texas Heart Institute	L00581	Houston	83	03/07/06
Houston	The PET Scan Center	L05411	Houston	09	03/02/06
Houston	The Stehlin Foundation for Cancer Research	L04244	Houston	05	03/03/06
Houston	The University of Texas Health Science Center of Houston	L02774	Houston	51	03/03/06
Houston	Medical Clinic of Houston LLP	L01315	Houston	31	03/10/06
Houston	Mohammed Attar MD PA	L05615	Houston	02	03/13/06
Houston	Texas Childrens Hospital Diagnostic Imaging 2-2521	L04612	Houston	37	03/10/06
Kilgore	Laird Memorial Hospital DBA Laird Memorial Hospital	L03496	Kilgore	22	03/01/06
Killeen	Metroplex Hospital	L03185	Killeen	27	03/14/06
La Grange	Austin Heart La Grange	L05516	La Grange	13	03/06/06
La Porte	Total Petrochemicals USA Inc	L04640	La Porte	16	03/08/06
Laredo	Cardiovascular Consultants PA DBA Nuclear Medicine of Eagle Pass	L05377	Laredo	03	03/10/06
Laredo	Laredo Cardiovascular Consultants DBA Laredo Cardiovascular Consultants PA	L04687	Laredo	11	03/13/06
Longview	Eastman Chemicals Company Texas Operations	L00301	Longview	104	03/07/06
Longview	High Tech Testing Service Inc	L05021	Longview	56	03/01/06
Longview	Longview Cancer Center	L05017	Longview	07	03/09/06
Lubbock	Highland Medical Center LP DBA Highland Medical Center	L02467	Lubbock	28	03/09/06
McAllen	Cardio Consulting LLC	L05821	McAllen	02	03/09/06
McAllen	McAllen Hospitals LP DBA McAllen Medical Center	L01713	McAllen	74	03/09/06
McAllen	McAllen Hospitals LP DBA McAllen Medical Heart Hospital	L04902	McAllen	12	03/13/06
Midland	Texas Oncology PA DBA Allison Cancer Center	L04905	Midland	08	03/13/06
Mission	South Texas Imaging Center-K PA DBA STIC-K	L05636	Mission	03	03/09/06
Missouri City	Fort Bend Hospital Inc DBA Fort Bend Medical Center	L03457	Missouri City	25	03/01/06
Nacogdoches	Memorial Hospital	L01071	Nacogdoches	38	03/01/06
Nacogdoches	Nacogdoches Heart Clinic	L04382	Nacogdoches	12	03/13/06
Nederland	Anatec Inc	L04865	Nederland	65	03/01/06
Odessa	Texas Oncology PA DBA West Texas Cancer Center	L04984	Odessa	02	03/10/06
Paris	Advanced Heart Care PA	L05290	Paris	13	03/01/06
Paris	Essent PRMC LP DBA Paris Regional Medical Center	L03199	Paris	32	03/03/06
Paris	Turner Industries Group LLC DBA Pipe Fabrication Division Texas Operations	L05237	Paris	08	03/03/06

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Paris	Physician Reliance Network Inc DBA Paris Regional Cancer Center	L04664	Paris	11	03/10/06
Pasadena	Air Products Manufacturing Corporation	L04560	Pasadena	12	03/07/06
Pasadena	Celanese LTD Clear Lake Plant	L01130	Pasadena	66	03/07/06
Pasadena	MEMC Pasadena Inc	L05129	Pasadena	06	03/09/06
Pasadena	OXY Vinyls LP	L02257	Pasadena	21	03/01/06
Plano	North Texas Regional Cancer Center	L05357	Plano	06	03/02/06
Plano	Physician Reliance Network Inc Texas Oncology Plano West Cancer Center	L05896	Plano	03	03/08/06
Plano	Presbyterian Hospital of Plano	L04467	Plano	37	03/10/06
Richardson	Truglo Inc	L05519	Richardson	04	03/08/06
Richardson	Richardson Hospital Authority DBA Richardson Regional Medical Center	L02336	Richardson	44	03/13/06
Robstown	US Ecology Texas Inc	L05518	Robstown	04	03/06/06
Rockdale	Alcoa Power Plant Sandow Station	L04386	Rockdale	14	03/01/06
San Antonio	Alamo Heart Associates PA	L04909	San Antonio	07	03/09/06
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	51	03/07/06
San Marcos	Austin Heart PA DBA Austin Heart San Marcos	L05452	San Marcos	17	03/06/06
Sherman	SCELA Inc DBA Cardinal Health	L05461	Sherman	07	02/27/06
Snyder	Weaver Services Inc DBA WSI Cased Hole Specialist	L01489	Snyder	29	03/01/06
Sweeny	Conocophillips Company Sweeny Complex	L00337	Sweeny	46	03/08/06
Texarkana	J M Hurley MD PA DBA Texarkana Cardiology Associates	L04738	Texarkana	09	03/13/06
Throughout TX	Enprotec Inc	L04266	Abilene	13	03/03/06
Throughout TX	Team Industrial Service Inc	L00087	Alvin	135	02/28/06
Throughout TX	Team Industrial Service Inc	L00087	Alvin	136	03/06/06
Throughout TX	Texas Department of Transportation Construction Division Materials & Pavements Section	L00197	Austin	113	03/08/06
Throughout TX	Conocophillips Company DBA Borger Refinery & NGL Center	L02480	Borger	44	03/08/06
Throughout TX	Phoenix Non Destructive Testing Co Inc	L04454	Channelview	46	03/10/06
Throughout TX	Construction Services	L05625	Christoval	05	03/07/06
Throughout TX	Citgo Refining & Chemicals Company L P	L00243	Corpus Christi	36	03/08/06
Throughout TX	Hooper Engineering Laboratories Inc	L02309	Dallas	11	03/08/06
Throughout TX	Asphalt Pavers Inc	L05376	El Paso	01	03/10/06
Throughout TX	Philips Lighting Company A Division of Philips Electronics of North America Corporation	L03823	El Paso	15	03/01/06
Throughout TX	Professional Services Industries Inc	L02476	El Paso	18	03/08/06
Throughout TX	Gilbert Texas Construction Corp	L04569	Fort Worth	18	03/09/06
Throughout TX	Cardinal Health	L01911	Houston	130	03/08/06
Throughout TX	Golder Associates Inc	L04645	Houston	07	03/08/06
Throughout TX	H & G Inspection Company Inc ADBA Statewide Maintenance Company	L02181	Houston	207	03/14/06

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout TX	Houston City of Department of Health & Human Services	L00149	Houston	71	03/03/06
Throughout TX	Metco	L03018	Houston	158	03/10/06
Throughout TX	Proportional Technologies Inc	L04747	Houston	19	03/08/06
Throughout TX	Roxar Inc	L05547	Houston	09	03/08/06
Throughout TX	Wood Group Logging Services Inc	L05262	Houston	17	03/09/06
Throughout TX	Terra Engineers Inc	L02464	Lubbock	31	03/08/06
Throughout TX	Entech Laboratory Systems Inc	L05634	Perryton	03	03/08/06
Throughout TX	Martin Marietta Materials Southwest LTD	L04768	San Antonio	07	03/10/06
Tyler	Physician Reliance Network Inc DBA Tyler Cancer Center	L04788	Tyler	08	03/07/06
Tyler	Cardiovascular Associates of East Texas PA	L04800	Tyler	16	03/13/06
Tyler	Trinity Mother Frances Health System	L01670	Tyler	119	03/10/06
Waco	Baylor University Department of Risk Management	L00400	Waco	20	03/08/06
Waco	Waco Cardiology Associates	L05158	Waco	12	03/13/06
Webster	Diagnostic Systems Laboratories Inc	L03084	Webster	31	02/22/06
Weslaco	Knapp Medical Center	L03290	Weslaco	37	03/13/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Heart Hospital IV LP DBA Heart Hospital of Austin	L05215	Austin	18	03/10/06
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	45	03/07/06
Bedford	Carter Bloodcare	L00630	Bedford	42	03/08/06
College Station	BCS Heart LLP	L04890	College Station	13	03/10/06
Houston	University of Houston Clear Lake	L02108	Houston	18	03/06/06
Kilgore	Laird Memorial Hospital DBA Laird Memorial Hospital	L03496	Kilgore	23	03/08/06
Lubbock	Covenant Health System DBA Joe Arrington Cancer Research & Treatment Center	L04881	Lubbock	38	03/10/06
McAllen	Texas Oncology PA DBA South Texas Cancer Center At McAllen	L04880	McAllen	05	03/14/06
Mesquite	HMA Mesquite Hospitals Inc DBA Medical Center of Mesquite	L02428	Mesquite	43	03/08/06

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Freeport	Huntsman Ethyleneamines LTD	L05457	Freeport	05	02/28/06
Texas City	Union Carbide Corporation	L00495	Texas City	53	03/06/06
Throughout TX	Weaver Boos & Gordon LLC	L05479	Fort Worth	01	02/28/06
Throughout TX	Western Technologies Inc	L05603	Phoenix	01	03/08/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200601746
Cathy Campbell
General Counsel
Department of State Health Services
Filed: March 22, 2006

Texas Department of Housing and Community Affairs

Notice to Public and to All Interested Mortgage Lenders

The Texas Department of Housing and Community Affairs (the "Department") intends to implement a Mortgage Credit Certificate Program (the "Program") to assist eligible very low, low and moderate income first-time homebuyers purchase a residence located within the State of Texas.

Under the Program, a first-time homebuyer who satisfies the eligibility requirements described below may receive a federal income tax credit in an amount equal to the product of the certificate credit rate established under the Program and the interest paid or accrued by the homeowner during the taxable year on the remaining principal of the certified indebtedness amount incurred by the homeowner to acquire the principal residence of the homeowner; provided that such credit allowed in any taxable year does not exceed \$2,000. In order to qualify to receive a credit certificate, the homebuyer must qualify for a conventional, FHA, VA or other home mortgage loan from a lending institution and must meet the other requirements of the Program.

The credit certificates will be issued to qualified mortgagors on a first-come, first-served basis by the Department acting through an administrator, which will review applications from lending institutions and prospective mortgagors to determine compliance with the requirements of the Program and determine that credit certificates remain available under the Program. No credit certificates will be issued prior to 90 days from the date of publication of this notice nor after the date that all of the credit certificate amount has been allocated to homebuyers and in no event after December 31, 2008.

In order to satisfy the eligibility requirements for a certificate under the Program, (a) the prospective residence must be a single-family residence located within the State of Texas that can be reasonably expected to become the principal residence of the mortgagor within a reasonable period of time after the financing is provided; (b) the prospective homebuyer's current income must not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons,

100% (120% in certain targeted areas) of the area median income; (c) the prospective homebuyer must not have owned a home as a principal residence during the past three years (except in the case of certain targeted area residences); (d) the acquisition cost of the residence must not exceed 90% (110%, in the case of certain targeted area residences) of the average area purchase price applicable to the residence; and (e) no part of the proceeds of the qualified indebtedness may be used to acquire or replace an existing mortgage. Pursuant to the Gulf Opportunity Zone Act of 2005, residences in certain areas affected by Hurricane Rita are treated as targeted area residences. To obtain additional information on the Program, including the boundaries of current targeted areas as well as the current income and purchase price limits (which are subject to revision and adjustment from time to time by the Department pursuant to applicable federal law and Department policy), please contact Sue Cavazos at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; (512) 475-3962.

The Department intends to maintain a list of single family mortgage lenders that will participate in the Program by making loans to qualified holders of these mortgage credit certificates. Any lender interested in appearing on this list or in obtaining additional information regarding the Program should contact Sue Cavazos at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701-2410; (512) 475-3962. The Department may schedule a meeting with lenders to discuss in greater detail the requirements of the Program.

This notice is published in satisfaction of the requirements of Section 25 of the Internal Revenue Code of 1986, as amended, and Treasury Regulation Section 1.25-3T(j)(4) issued thereunder regarding the public notices prerequisite to the issuance of mortgage credit certificates and to maintaining a list of participating lenders.

TRD-200601752
William Dally
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: March 22, 2006

University of Houston System

Notice of Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston System (UH) for and in behalf of the University of Houston-Victoria, furnishes this notice of Request for Proposal. The

University of Houston-Victoria (UHV) is seeking to hire a marketing consultant to help develop a cohesive message to be used in all marketing communications that speaks effectively to the targeted market; to help develop a comprehensive marketing plan that delivers this message to potential students and reiterates the brand identity of the University of Houston-Victoria, thereby helping to increase enrollment numbers; and to help develop collateral marketing materials (based on suggestions provided by marketing research) to reinforce the message to target audiences. This advice and consultation is authorized and supported by the UHV President as being of substantial need and necessary in performing the needed evaluation.

UHV's preference is to have a comprehensive marketing plan in place for Fall 2006 student recruiting.

The term of this contract is to be for a one-year period beginning on or about June 1, 2006, and ending May 31, 2007, subject to a one-year renewal option. Further assistance can be obtained from Lydia Huber, Purchasing Agent, at (361) 570-4823. All proposals must be specific and must be responsive to the criteria set forth in this request. Successful Proposer will be required to execute a UH Consulting Agreement.

I. SCOPE OF WORK: The consultant will be expected to have in place at the conclusion of this project the following:

(A) Define the UHV's target market with supporting demographic data by region served and offer an in-depth understanding of current, former and prospective students' consumer decision process for higher education, at the undergraduate and graduate level.

(B) Clarify the UHV's identity with attention to its special features, key programs, mission, and goals and in relation to the University of Houston System, The Victoria College, and other area institutions of higher education (including online).

(C) Provide a written report to the UHV Marketing Committee within 30 to 45 days of contract execution with recommendations for the following:

(i.) Identify consumer attitude and behavior:

* Who attended and why?

* Who did not attend and why?

* Who dropped out and why?

* What do advisors at community colleges say about us and why?

* What do business leaders say about us and why?

(ii.) Evaluate existing image/brand and make recommendations for improvement. Consider UHV name, logo, tag lines, and colors.

(iii.) Develop a comprehensive marketing plan with detailed advertising strategies (e.g., website, billboard, newspaper) and related assessment measures.

II. INFORMATION ABOUT THE UNIVERSITY OF HOUSTON-VICTORIA: The University of Houston-Victoria is an upper-level and graduate institution with selected bachelor's and master's degree programs in arts and sciences, business administration, and education. Although the University primarily serves commuting students from Victoria and surrounding counties, UHV also offers degree programs, in collaboration with other UH System institutions, at off-campus centers at Sugar Land and Cinco Ranch in Fort Bend County and offers courses at a number of other off-campus sites in the region. The current student enrollment is approximately 2,600 students. Of the 2,600 students, about 46% of them are from Victoria and the thirteen surrounding counties; about 47% are from Fort Bend and Harris County; and the remaining 7% are either out of state or foreign students.

III. DEADLINE FOR PROPOSALS: Submit one original and seven (7) copies of your proposal in a sealed envelope to: Purchasing Office, University of Houston-Victoria, 3007 North Ben Wilson, University West, Room 107D, Victoria, Texas 77901 before 3:00 p.m. CST on April 30, 2006. The original shall be prepared on a word processor and formatted in at least 10-point font that is clearly readable. The copies shall be of good, readable quality.

IV. COMPLIANCE WITH RFP REQUIREMENTS: By submission of a Proposal, a Proposer agrees to be bound by the requirements set forth in this RFP. UHV, at its sole discretion, may disqualify a Proposal from consideration, if UHV determines a Proposal is non-responsive and/or non-compliant, in whole or in part, with the requirements set forth in this RFP.

V. SIGNATURE, CERTIFICATION OF PROPOSER: The Proposal must be signed and dated by a representative of the Proposer who is authorized to bind the Proposer to the terms and conditions contained in this RFP and to compliance with the information submitted in the proposal. Each Proposer submitting a Proposal certifies to both: (i) the completeness, veracity, and accuracy of the information provided in the proposal and (ii) the authority of the individual whose signature appears on the Proposal to bind the Proposer to the terms and conditions set forth in this RFP. Proposals submitted without the required signature shall be disqualified.

VI. OWNERSHIP OF PROPOSALS: All Proposals become the physical property of UHV upon receipt.

VII. USE, DISCLOSURE OF INFORMATION: Proposers acknowledge that UHV is an agency of the State of Texas and is, therefore, required to comply with the Texas Public Information Act. If a Proposal includes proprietary data, trade secrets, or information that Proposer wishes to except from public disclosure, then the Proposer must specifically and clearly label each section or page of such data, secrets, or information as follows: "PRIVILEGED AND CONFIDENTIAL-PROPRIETARY INFORMATION". To the extent permitted by law, information labeled by the Proposer as proprietary will be used by UHV only for purposes related to or arising out of the: (i) evaluation of Proposals, (ii) selection of a Proposer pursuant to the RFP process, and (iii) negotiation and execution of a Contract, if any, with the Proposer selected.

VIII. RECESSION OF PROPOSER: A Proposal can be withdrawn from consideration at any time prior to expiration of the Deadline for Proposals (Section III on page 2) pursuant to a written request sent to the Purchasing Office.

IX. REQUEST FOR CLARIFICATION: UHV reserves the right to request clarification of any information contained in a Proposal.

X. ADDENDA TO THE RFP: Addenda, if any, will be posted in the *Texas Register*. If necessary, as determined by UHV, Proposers will be allowed time to revise and supply additional information in response to such addenda.

XI. PRE-PROPOSAL CONFERENCE: None.

XII. COMMUNICATIONS WITH UHV PERSONNEL: Except as provided in this RFP and as is otherwise necessary for the conduct of ongoing UHV business operations, Proposers are expressly and absolutely prohibited from engaging in communications with UHV personnel who are involved in any manner in the review and/or evaluation of the Proposals; selection of a Proposer, and/or negotiations or formalization of a Contract. If any Proposer engages in conduct or communications that UHV determines are contrary to the prohibitions set forth in this section, UHV may, at its sole discretion, disqualify the Proposer and withdraw the Proposer's Proposal from consideration.

XIII. EVALUATION OF PROPOSALS: The Proposals will be reviewed in accordance with the criteria set forth in this RFP. Proposals that are: (i) incomplete, (ii) not properly certified and signed, (iii) not in the required format, or (iv) otherwise non-compliant, in whole or in part, with any of the requirements set forth in this RFP may be disqualified by UHV.

XIV. EVALUATION INFORMATION: Each Proposer must provide current, accurate, complete information about all of the following in support of its Proposal (please coordinate numbers with responses):

(A) Business, Financial information

(i) Name, address, telephone number, and title of the person(s) whom UHV can contact about the proposal;

(ii) State of Texas corporate filings, DBA name, registration and tax identification number;

(iii) Name(s) of owner(s) or partners or directors, as applicable;

(iv) Insurance carrier(s), types, and amounts of coverage currently maintained by the Proposer;

(v) State of Texas Historically Underutilized Business (HUB) status or other minority certification, if any;

(B) Services and Consulting Methodology:

(i) Description of Services the Proposer is able to provide;

(ii) Describe in sufficient detail the methodology you will employ and tasks you will perform to achieve the goals of the project as set forth in this RFP;

(iii) Sample or prototypical reports that would be furnished to UHV;

(iv) Billing frequency to be utilized by the Proposer;

(C) Experience:

(i) Briefly discuss your firm's experience as a marketing consultant for organizations of similar size, structure, and scope of work required. Successful examples of your innovations, strategies or ideas (not to exceed one-half (1/2) page per example) should be included.

(ii) Length of time and years during which the Proposer has provided the type of services contemplated by this RFP;

(iii) Provide an overview of your firm, including whether you would be considered a local, regional, or national firm and the demographics of your client base;

(iv) Provide the total number of personnel employed by your firm, to include categorization by function.

(v) Provide name, title, and telephone number of each person who will be assigned to our account. The resumes of each of these employees must be included;

(vi) Provide a description of the current consulting load of the personnel to be assigned to our account;

(vii) Disclose if you intend to subcontract any service. The service and vendor must be identified.

(D) References: Provide a list of three clients, preferably colleges/universities, for whom the Proposer has provided Marketing Consultant services within the last three years, including name of firm, contact person's name, title, address, telephone number, and scope of project;

(E) Performance Timetable: Indicate the number of hours that you believe is necessary and appropriate for you firm to complete each of the tasks described in the Scope of Work section of this RFP. Also indicate the number of meetings with the UHV Communications and Marketing

team and method of contact (i.e., telephone, on-site face-to-face, ITV). Recommended time should be identified for each role identified in this RFP and totaled for all aspects of the project. The University envisions an initial meeting between UHV Communications & Marketing Team and the Successful Proposer; interim contact, as necessary; and a final on-site meeting for delivery and presentation of final written report.

(F) Fees: Provide a fee schedule for the consulting services you will provide. Identify by type and amount any reimbursable expenses over and above the quoted consulting fee.

XV. DISCUSSIONS WITH PROPOSERS: UHV's Evaluation Team may conduct discussions and/or negotiations with any Proposer that appears to be eligible for award ("Eligible Proposer") pursuant to the selection criteria set forth in this RFP. In conducting discussions and/or negotiations, UHV will not disclose information derived from Proposals submitted by competing Proposers, except as and if law requires disclosure.

XVI. MODIFICATION OF PROPOSALS: All Eligible Proposals will be afforded the opportunity to submit best and final Proposals if: (a) negotiations with any other Proposer result in material alteration of the RFP and (b) such material alteration has a cost consequence that could alter the Proposer's quotations regarding rates for services.

XVII. SELECTION OF PROPOSER: The Proposer selected for award will be the Proposer whose Proposal, as presented in response to this RFP and as determined by UHV in accordance with the evaluation criteria set forth in this RFP, is the most advantageous to UHV. Proposers acknowledge that UHV is not bound to accept the lowest-priced Proposal.

XVIII. EVALUATION OF PROPOSALS: Submission of a Proposal indicates the Proposer's acceptance of the evaluation process set forth in this RFP and the Proposer's acknowledgement that subjective judgments must be made by UHV in regard to the evaluation process.

XIX. CRITERIA FOR EVALUATION: Evaluation of Proposals and award to the Selected Proposer will be based on the following factors, as weighted and listed as follows:

(i) Demonstrated ability of the Proposer to meet all the requirements of this RFP as described in the Scope of Work (50%);

(ii) Qualifications: References, experience and demonstrated management experience (30%); and

(iii) Price Schedule: Rate for Services quoted (20%).

XX. CONSIDERATION OF ADDITIONAL INFORMATION: UHV reserves the right to ask for and consider any additional information deemed beneficial to UHV in evaluation of the Proposals.

XXI. TERMINATION: This RFP in no manner obligates UHV to the eventual purchase of any consulting services described, implied or which may be proposed until confirmed by a written consultant contract. Progress toward this end is solely at the discretion of UHV and may be terminated without penalty or obligation at any time prior to the signing of a contract. UHV reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals.

TRD-200601729

Brian S. Nelson

Executive Director and Associate General Counsel

University of Houston System

Filed: March 21, 2006

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by FIRST GUARD INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Phoenix, Arizona.

Application for admission to the State of Texas by UNIVERSAL HEALTH CARE INSURANCE COMPANY, INC., a foreign life, accident and/or health company. The home office is in St. Petersburg, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200601744

Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 22, 2006



Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of NATIONAL VISION ADMINISTRATORS, L.L.C. (using the assumed name of E-VNA, L.L.C.), a foreign third party administrator. The home office is CLIFTON, NEW JERSEY.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200601745

Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: March 22, 2006



Texas Department of Licensing and Regulation

Vacancy on Medical Advisory Committee

The Texas Department of Licensing and Regulation announces a vacancy on the Medical Advisory Committee established by Texas Occupations Code, Chapter 2052. The pertinent rules may be found in 16 TAC §61.120. The purpose of the Medical Advisory Committee is to advise the Texas Commission of Licensing and Regulation on health issues for boxing event contestants including physical tests for contestants and registration requirements for ringside physicians.

The Committee is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval. The Committee consists of one trauma specialist; one ophthalmologist; one sports doctor; one neurologist; one emergency medical technician; and two public members. Members serve at the will of the Commission. This announcement is for one position of a neurologist.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 463-6599 or 1-800-803-9202, FAX (512) 475-2874 or e-mail jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however any required travel for an interview would be at the applicant's expense.

TRD-200601757

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 22, 2006



Vacancy on Property Tax Consultants Advisory Council

The Texas Department of Licensing and Regulation announces a vacancy on the Property Tax Consultants Advisory Council established by Texas Occupations Code, Chapter 1152. The pertinent rules may be found in 16 TAC §66.65. The purpose of the Property Tax Consultants Advisory Council is to advise the Texas Commission of Licensing and Regulation on standards of practice, conduct, and ethics for registrants; setting fees; examination contents and standards of performance for senior property tax consultants; recognition of continuing education programs and courses for registrants; and establishing educational requirements for initial applicants.

The Council is composed of six members appointed by the presiding officer of the Commission, with the Commission's approval. The Council consists of six registered property tax consultants. Each person appointed for membership on the council must: be a registered senior property tax consultant; be a member of a nonprofit, voluntary trade association that has a membership primarily composed of individuals who perform property tax consulting services in this state or who engage in property tax management in this state for other persons, has written experience and examination requirements for membership, and subscribes to a code of professional conduct or ethics; be a resident of this state for the five years preceding the date of the appointment; and have performed or supervised the performance of property tax consulting services as the individual's primary occupation continuously for the five years preceding the date of the appointment. Members serve staggered three-year terms. This announcement is for one position of a registered property tax consultant.

Interested persons should request an application from the Texas Department of Licensing and Regulation by telephone (512) 475-4765, FAX (512) 475-2874 or Email jackie.revilla@license.state.tx.us. Applications may also be downloaded from the Department website at: www.license.state.tx.us.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-200601730

William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: March 21, 2006



Texas Lottery Commission

Instant Game Number 651 "Top Prize \$500,000"

1.0 Name and Style of Game.

A. The name of Instant Game No. 651 is "TOP PRIZE \$500,000". The play style is "match 3 of 9".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 651 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 651.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for

dual-image games. The possible black play symbols are: \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$30.00, \$60.00, \$100, and \$50,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 651 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$6.00	SIX\$
\$10.00	TEN\$
\$20.00	TWENTY
\$30.00	THIRTY
\$60.00	SIXTY
\$100	ONE HUND
\$50,000	YR/10 YRS

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 651 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
FOR	\$4.00
FIV	\$5.00
SIX	\$6.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bot-

tom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$60.00, or \$100.

I. High-Tier Prize - A prize of \$50,000/YR (\$50,000 a year for 10 years).

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (651), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 651-0000001-001.

L. Pack - A pack of "TOP PRIZE \$500,000" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TOP PRIZE \$500,000" Instant Game No. 651 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TOP PRIZE \$500,000" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If a player reveals 3 (three) matching dollars amounts, the player wins that dollar amount. If a player reveals 3 (three) \$50,000 dollar amount play symbols, the player wins \$50,000 for 10 years. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 (nine) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut and have exactly 9 (nine) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 9 (nine) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain 4 or more like symbols.

C. No three or more non-winning pairs on a ticket.

D. Tickets can only win once.

2.3 Procedure for Claiming Prizes.

A. To claim a "TOP PRIZE \$500,000" Instant Game prize of \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$6.00, \$10.00, \$20.00, \$30.00, \$60.00, or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to

pay a \$60.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TOP PRIZE \$500,000" Instant Game prize of \$50,000/YR (\$50,000 a year for 10 years), the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TOP PRIZE \$500,000" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. When claiming a "TOP PRIZE \$500,000" Instant Game prize of \$50,000 a year for 10 years the claimant will receive,

1. Annually via direct deposit to the winner's account. With this plan, upon validation of the prize, a payment of \$50,000 less any taxes and/or other offsets or mandatory withholdings required by law, will be made once a year on the first business day of the anniversary month of the claim. Annual payments will be made for a period of 10 years or a total of 10 annual to reach the total maximum payment of \$500,000.

2. If a payment falls on a holiday or weekend, the payment will be made on the following business day.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

- B. if there is any question regarding the identity of the claimant;

- C. if there is any question regarding the validity of the ticket presented for payment; or

- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "TOP PRIZE \$500,000" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "TOP PRIZE \$500,000" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

- A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

- B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 tickets in the Instant Game No. 651. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 651 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	2,520,000	11.90
\$2	3,000,000	10.00
\$3	240,000	125.00
\$4	180,000	166.67
\$5	150,000	200.00
\$6	90,000	333.33
\$10	120,000	250.00
\$20	90,000	333.33
\$30	25,000	1,200.00
\$60	9,125	3,287.67
\$100	3,750	8,000.00
\$500,000	5	6,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.67. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 651 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 651, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200601677
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 15, 2006

Public Utility Commission of Texas

Amended Notice of Application for an Amendment to the Designation as an Eligible Telecommunications Provider (ETP)

Santa Rosa Telephone Cooperative, Inc. (Santa Rosa) filed an application with the Public Utility Commission of Texas (commission) on March 16, 2006, for an amendment to its designation as an eligible telecommunications provider (ETP), with a proposed effective date of April 30, 2006. Santa Rosa seeks ETP designation in the Haskell and Weinert exchanges of Valor Telecommunications of Texas, LP.

Persons who wish to comment upon the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326,

or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 14, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32274.

TRD-200601727
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 21, 2006

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 16, 2006, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Cox Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 32513 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32513.

TRD-200601722

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 21, 2006



Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on March 15, 2006, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of SGE Energy Management, Ltd. for Retail Electric Provider (REP) certification, Docket Number 32507 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the area of the Electric Reliability Council of Texas (ERCOT).

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 7, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32507.

TRD-200601707
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 20, 2006



Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on March 15, 2006, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of Fulcrum Power Services, L.P. for Retail Electric Provider (REP) certification, Docket Number 32510 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire state of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 7, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32510.

TRD-200601708
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 20, 2006



Notice of Application for an Amendment to Certificate of Convenience and Necessity for Service Area Exception within Real County

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on March 17, 2006 for service area boundary exception within Real County, Texas.

Docket Style and Number: Application of Pedernales Electric Cooperative, Inc. for an Amendment to Certificate of Convenience and Necessity for Service Area Exception within Real County. Docket Number 32518.

The Application: Pedernales Electric Cooperative, Inc. (PEC) and Bandera Electric Cooperative (BEC) requested a boundary exception to allow PEC to provide electric service to a single customer, Mr. Rick Bosely. BEC has agreed to the proposed boundary exception between the two companies because PEC has facilities closest to the site, and it will therefore cost PEC less than BEC to extend facilities to the customer.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 10, 2006 by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32518.

TRD-200601726
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 21, 2006



Notice of Application for an Amendment to Certificate of Convenience and Necessity for Service Area Exception within Sutton County

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on March 17, 2006 for service area boundary exception within Sutton County, Texas.

Docket Style and Number: Application of Pedernales Electric Cooperative, Inc. for an Amendment to Certificate of Convenience and Necessity for Service Area Exception within Sutton County. Docket Number 32517.

The Application: Pedernales Electric Cooperative, Inc. (PEC) and Southwest Texas Electric Cooperative (SWTEC) requested a boundary exception to allow PEC to provide electric service to a single customer, Mr. C. R. Sproul. SWTEC has agreed to the proposed boundary exception between the two companies because PEC has facilities closest to the site, and it will therefore cost PEC less than SWTEC to extend facilities to the customer.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 10, 2006 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32517.

TRD-200601725

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 21, 2006



**Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.215**

Notice is given to the public of the filing on March 17, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or before March 27, 2006.

Docket Title and Number: Application of Southwestern Bell Telephone Company, L.P. d/b/a AT&T Texas for Approval of LRIC Study For Pay Telephone Exchange Access Service (PTEAS) Pursuant to P.U.C. Substantive Rule 26.215, Docket Number 32522.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 32522. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 32522.

TRD-200601724
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 21, 2006



**Revised Notice of Application for Service Area Exception in
Bell County, Texas**

Notice is given to the public of the filing with the Public Utility Commission of Texas of a revised application filed on March 14, 2006, for a Certificate of Convenience and Necessity for service area exception within Bell County, Texas.

Docket Style and Number: Application of TXU Electric Delivery Company (TXU) for a Certificate of Convenience and Necessity for Service Area Exception within Bell County. Docket Number 32439.

The Application: Elm Creek Water Supply has requested electric service to a single point of service to serve a 65 hp pumping unit motor. The proposed site is located in the singly certificated area of TXU and the nearest TXU electric facilities are located approximately 3 miles to the South. McLennan County Electric Cooperative, Inc (McLennan) presently operates existing electric facilities less than 1/2 mile from the location. TXU proposes a service area exception to allow McLennan to serve the proposed Elm Creek load. TXU is relinquishing the right to serve the consuming facility that McLennan seeks to serve. Both applicants are in agreement and support the application.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than April 7, 2006 by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32439.

TRD-200601723
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 21, 2006



Railroad Commission of Texas

**New OW Forms Adopted in Conjunction with Amendments
to 16 TAC §3.80**

The Railroad Commission of Texas adopts three new Oil and Gas Division forms as part of the adopted amendments to 16 TAC §3.80, relating to Commission Forms, Applications, and Filing Requirements, published in this issue of the *Texas Register*. The amendments to §3.80 are in the Table only and refer to new Form OW-1, Application for Authority to Conduct a Surface Inspection of Orphaned Oil or Gas Wells; new Form OW-2, Application for Certificate of Designation as the Operator of Orphaned Oil or Gas Wells; and new Form OW-3, Application for Payment for Reactivating or Plugging an Orphaned Oil or Gas Well. The Commission published the proposed amendments to §3.80 and the three proposed new forms in the January 27, 2006, issue of the *Texas Register* (31 TexReg 450) and (31 TexReg 597), respectively, and received no comments on the amendments or the forms. The forms are published with this notice; the only changes are the removal of the word "Draft" and the addition of the effective date on each form.

APPLICATION FOR AUTHORITY
TO CONDUCT A SURFACE INSPECTION
OF ORPHANED OIL OR GAS WELLS

FORM OW-1

EFF. 04-2006

READ INSTRUCTIONS ON BACK

-RRC USE ONLY-

P-5 Status: _____
Financial Security Status: _____
Initials of P-5 reviewer: _____
Date: _____

1. Operator name (exactly as shown on P-5 Organization Report)			2. Operator P-5 No.			
3. Operator address (including city, state, and zip code)						
4. County:		5. Field Name:		6. Field No.:		
7. Lease Name						
8. Individual well information (exactly as shown on Proration Schedule) <i>NOTE: Please complete one form for each lease.</i>						
Oil Lease or Gas ID No.	Well Number	API No. (if known) 42-		Oil Lease or Gas ID No.	Well Number	API No. (if known) 42-

CERTIFICATION

In accordance with §89.047, Tex. Nat. Res. Code, relating to the Orphaned Well Reduction Program, I seek authority to conduct a surface inspection of above-listed well(s) for the purpose of assessing the current status and viability of the well(s). I hereby agree to the requirements and conditions of such authority, if granted.

I declare under penalties in §91.143, Texas Natural Resources Code, that I am authorized to file this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct and complete to the best of my knowledge.

SIGNATURE _____ NAME (Print or Type) _____
TITLE _____ PHONE () _____ DATE _____
NAME OF PERSON TO CONDUCT SURFACE INSPECTION,
IF OTHER THAN PERSON ABOVE (Print or Type): _____ PHONE () _____

REQUIREMENTS AND CONDITIONS

The operator must deliver written notice to the appropriate Commission District Office and to the owner of record of the surface estate and any occupant of the tract on which the well is located at least three (3) days before the date of the inspection. The notice must include a copy of this confirmation of authority to conduct a surface inspection, and the date and approximate time that the operator will conduct the inspection.

Date of Inspection: _____ Approximate time: _____

In conducting a surface inspection of the orphaned wells, the person authorized by this confirmation may visually inspect the wells and all related equipment, tanks, and other facilities and may conduct noninvasive testing such as using a gauge to determine the pressure present at the wellhead but may not produce oil or gas from the wells, reenter the wells, pull tubing from or perform any other type of downhole work on the wells, conduct a salvage operation on the wells, or remove any tangible item from the well sites or lease.

Issuance of this confirmation does not guarantee that the Commission will designate the applicant as the operator of the referenced wells. This certificate will not prevent transfer of the wells to an operator who has a good faith claim. The Commission must process any lease or well transfer requests as they are received.

-RRC USE ONLY-

CONFIRMATION OF AUTHORITY TO CONDUCT A
SURFACE INSPECTION OF ORPHANED WELLS

The operator noted above is an operator in good standing and the subject wells are not already subject to nomination; therefore, the Commission hereby accepts the nomination and hereby confirms the operator's authority to conduct a surface inspection of the nominated wells, subject to the requirements and conditions stated herein.

Approved by: _____

Approval Date: _____

This authority EXPIRES 30 calendar days from the Approval Date.

INSTRUCTIONS
FORM OW-1
APPLICATION FOR AUTHORITY TO CONDUCT A SURFACE INSPECTION OF ORPHANED OIL OR GAS WELLS
EFF. 04-2006

ORPHANED WELL REDUCTION PROGRAM: Section 89.047, Texas Natural Resources Code, relating to Orphaned Well Reduction Program, establishes procedures, requirements, and incentives for a person to assume operatorship and regulatory responsibility for orphaned oil or gas wells. A person who is considering assumption of operatorship and regulatory responsibility for orphaned oil or gas wells must submit this form in order to nominate the well under consideration.

ELIGIBILITY: The Commission may only approve a request to nominate and conduct a surface inspection of an orphaned well if the operator:

- (1) has a Commission-approved Organization Report (Form P-5) on file with the Commission;
- (2) is the designated operator of at least one well within the Commission's jurisdiction;
- (3) has filed with the Commission under §91.104, Tex. Nat. Res. Code, financial security (a bond, letter of credit, or cash deposit) in an amount sufficient to qualify to operate one or more additional wells; and
- (4) is an operator in good standing (is not the subject of a Commission or court order regarding a violation of a Commission rule with which the operator has not complied or a complaint that has been docketed by the Commission alleging a violation of a Commission rule).

APPLICATION REQUIREMENTS: If you meet the eligibility requirements and you wish to conduct a surface inspection of an orphaned well, mail a completed, signed FORM OW-1, APPLICATION FOR AUTHORITY TO CONDUCT A SURFACE INSPECTION OF ORPHANED OIL OR GAS WELLS, to the P-5 Section, Oil and Gas Division, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas, 78711-2967. Please complete one form for each lease.

CONFIRMATION OF AUTHORITY TO CONDUCT A SURFACE INSPECTION: If the wells have not been nominated already or transferred to another operator and the operator applying for well nomination is an operator in good standing in accordance with §89.047, Tex. Nat. Res. Code, the Commission will accept the nomination and issue confirmation of authority to conduct a surface inspection of the wells subject to the stated requirements and conditions on the front of this form. The authority expires 30 calendar days from the approval date.

SUBSEQUENT FILINGS: If you wish to be designated as the operator of orphaned oil or gas wells under this program, you must file:

1. a completed FORM OW-2, APPLICATION TO BE DESIGNATED AS OPERATOR OF ORPHANED OIL OR GAS WELLS;
2. FORM P-4, Producer's Transportation Authority and Certificate of Compliance, in accordance with 16 TAC §3.58 (Statewide Rule 58);
3. if you are not requesting designation as the operator of all wells on a lease, FORM P-6, Request for Permission to Consolidate/Subdivide Leases, along with a before and after plat and all required attachments;
4. a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate accessed by the well, such as evidence of a current oil and gas lease or a recorded deed conveying a fee interest in the mineral estate;
5. sufficient financial security in accordance with 16 TAC §3.78 (Rule 78) to cover the well or wells for which you wish to be designated as operator, and
6. a non-refundable fee in the amount of \$250 FOR EACH WELL for which you wish to be designated as the operator.

The Commission will issue a CERTIFICATE OF DESIGNATION AS OPERATOR OF ORPHANED OIL OR GAS WELLS to the person who is designated by the Commission under §89.047, Texas Natural Resources Code, as the operator of an orphaned well.

BENEFITS OF DESIGNATION AS OPERATOR OF ORPHANED WELL
FROM JANUARY 1, 2006, THROUGH DECEMBER 31 2007:

(1) A NONTRANSFERABLE PAYMENT FROM THE COMMISSION in an amount equal to the depth of the well multiplied by \$0.50 for each foot of well depth if, not later than the third anniversary of the date the Commission designates the person as the operator of the well, the person brings the well back into continuous active operation or plugs the well in accordance with Commission rules. **LIMITS ON PAYMENTS:** Please note that the Commission must make payments to operators annually in the same order the Commission determines the operators to be entitled to the payments. The aggregate amount of payments in any state fiscal year (September 1 through August 31) may not exceed \$500,000. An operator may not receive more than one payment under the Orphaned Well Reduction Program for the same well; or cumulative payments in an amount that exceeds the total amount of financial security the operator has filed with the Commission under 16 TAC 3.78 (Statewide Rule 78).

(2) A NONTRANSFERABLE EXEMPTION FROM THE OIL FIELD CLEANUP REGULATORY FEES provided by §§81.116 and 81.117 for all future production from the well.

(3) A NONTRANSFERABLE EXEMPTION FROM SEVERANCE TAXES for all future production from the well as provided by §202.060, Tax Code. A well is considered to be in continuous active operation for purposes of the exemption if: (1) the well is a producing well and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in the records of the Commission and as authorized by a permit issued by the Commission; or (2) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission.

REQUIREMENTS TO QUALIFY FOR TAX EXEMPTION: Under §202.060, Texas Tax Code, relating to Exemption for Oil and Gas From Reactivated Orphaned Wells, the hydrocarbons produced from the well identified in the certificate qualify for a severance tax exemption. In order to qualify for this tax exemption, the person responsible for paying the tax must apply to the Texas Comptroller of Public Accounts (Comptroller). The application must include a copy of the certificate issued by the Railroad Commission. The Comptroller may require a person applying for the tax exemption to provide any relevant information necessary to administer this section. The Comptroller may establish procedures to comply with this section. The exemption takes effect on the first day of the month following the month in which the Comptroller approves the application. The exemption is non-transferable. If the person to whom this certificate is issued ceases to be the operator of the well as shown by Commission records, the Commission will notify the Comptroller. The exemption expires on the date the Comptroller receives the notice. A person who makes or subscribes an application, report, or other document and submits it to the Commission to form the basis for an application for a tax exemption under this section, knowing that the application, report, or other document is untrue in a material fact, is subject to the penalties imposed by Chapters 85 and 91 of the Texas Natural Resources Code. A person is liable to the state for a civil penalty if the person applies or attempts to apply the tax exemption authorized by this section for a well after the person to whom the certificate for the well was issued ceases to be the operator of the well as shown by Commission records.

APPLICATION FOR CERTIFICATE
OF DESIGNATION AS THE OPERATOR
OF ORPHANED OIL OR GAS WELLS

FORM OW-2

EFF. 04-2006

-RRC USE ONLY-

READ INSTRUCTIONS ON BACK

P-4 Status: _____
Financial Security Status: _____
P-5 Status: _____
Initials of reviewer: _____
Date: _____

1. Operator name (exactly as shown on P-5 Organization Report)				2. Operator P-5 No.	
3. Operator address (including city, state, and zip code)					
4. County:		5. Field Name:		6. Field No.:	
7. Lease Name					
8. Individual well information (exactly as shown on Proration Schedule) <i>NOTE: Please complete one form for each lease.</i>					
Oil Lease or Gas ID No.	Well Number	API No. (if known) 42-		Oil Lease or Gas ID No.	Well Number 42-

CERTIFICATION

In accordance with §89.047, Tex. Nat. Res. Code, relating to the Orphaned Well Reduction Program, I wish to be designated as the operator of the above-listed orphaned oil or gas wells.

I declare under penalties in §91.143, Texas Natural Resources Code, that I am authorized to file this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct and complete to the best of my knowledge.

SIGNATURE _____ NAME (Print or Type) _____
TITLE _____ PHONE () _____ DATE _____

You must remit a non-refundable fee in the amount of \$250 FOR EACH WELL for which you wish to be designated as the operator. (Make any check or money order payable to Railroad Commission of Texas. For information on use of credit cards, contact the Commission.)

MAIL THIS FORM, ATTACHMENTS,
AND FEE(S) TO:

Commission Cashier
Railroad Commission of Texas
P. O. Box 12967
Austin, Texas 78711-2967

-RRC USE ONLY-

REGISTER No. _____

GL # _____

Amount _____ Remit Type _____

-RRC USE ONLY-

RAILROAD COMMISSION OF TEXAS
CERTIFICATE OF DESIGNATION AS OPERATOR OF ORPHANED OIL OR GAS
WELLS

The above-named operator has complied with the requirements of Section 89.047, Texas Nat. Res. Code, relating to the Orphaned Well Reduction Program, and is hereby designated as the operator of the above-listed well(s) for the purposes of that section.

APPROVED BY: _____ DATE: _____

NOTE: It is the operator's responsibility to submit to the Comptroller of Public Accounts any information required to apply for the exemptions from severance tax and Oil Field Cleanup Regulatory fees on production from this well(s) authorized by §89.047, Tex. Nat. Res. Code.

INSTRUCTIONS
FORM OW-2
APPLICATION FOR CERTIFICATE OF DESIGNATION AS OPERATOR OF ORPHANED OIL OR GAS WELLS
EFF. 04-2006

ORPHANED WELL REDUCTION PROGRAM: Section 89.047, Texas Natural Resources Code, relating to Orphaned Well Reduction Program, establishes procedures, requirements, and incentives for a person to assume operatorship and regulatory responsibility for an orphaned oil or gas well. A person who is considering assumption of operatorship and regulatory responsibility for an orphaned oil or gas well(s) must submit this form in order to be designated the operator of an orphaned well under that program. Please complete one form for each lease.

WHAT TO FILE: If you wish to be designated as the operator of an orphaned oil or gas well(s) under this program, you must file:

- (1) a completed FORM OW-2, APPLICATION FOR CERTIFICATE OF DESIGNATION AS OPERATOR OF ORPHANED OIL OR GAS WELLS;
- (2) FORM P-4, Producer's Transportation Authority and Certificate of Compliance, in accordance with 16 TAC §3.58 (Statewide Rule 58);
- (3) if you are not requesting designation as the operator of all wells on a lease, FORM P-6, Request for Permission to Consolidate/Subdivide Leases, along with a before and after plat and all required attachments;
- (4) a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate accessed by the well, such as evidence of a current oil or gas lease or a recorded deed conveying a fee interest in the mineral estate; and
- (6) a non-refundable fee in the amount of \$250 FOR EACH WELL for which you wish to be designated as the operator.

PREREQUISITES: If you wish to be designated as the operator of an orphaned oil or gas well(s) under this program, you must:

- (1) have on file with the Commission sufficient financial security in accordance with 16 TAC §3.78 (Rule 78) to cover the well or wells for which you wish to be designated as operator; and
- (2) be an operator in good standing (an operator who: (a) has a Commission-approved organization report; (b) is the designated operator of at least one well within the Commission's jurisdiction; (c) has filed with the Commission under §91.104, Tex. Nat. Res. Code, a bond, letter of credit, or cash deposit in an amount sufficient to qualify to operate one or more additional wells; and (d) is not the subject of a Commission or court order regarding a violation of a Commission rule with which the operator has not complied or a complaint that has been docketed by the Commission alleging a violation of a Commission rule.)

In addition, if the well is subject to a Commission Final Order requiring plugging, you will not be recognized as the operator unless the Commission first conducts a hearing and enters a superceding order.

WHERE TO FILE: File this form, the attachments and \$250 for each well to Commission Cashier, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967P-5 Section, Oil and Gas Division, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas, 78711-2967. Make any check or money order payable to the Railroad Commission of Texas. For information on credit card or pre-paid accounts, contact the Commission.

If the wells have not already been nominated or transferred to another operator, the operator applying for a certificate of designation as operator of the well is an operator in good standing in accordance with §89.047, Tex. Nat. Res. Code, the operator submits the required attachments and fees, and the operator has sufficient financial security in accordance with Rule 78 to cover the wells, the Commission will issue a CERTIFICATE OF DESIGNATION AS OPERATOR OF ORPHANED OIL OR GAS WELLS to the person who is designated by the Commission under §89.047, Texas Natural Resources Code, as the operator of orphaned wells.

BENEFITS OF DESIGNATION AS OPERATOR OF ORPHANED WELL
FROM JANUARY 1, 2006, THROUGH DECEMBER 31 2007:

A person designated as the operator of an orphaned well on or after January 1, 2006, and not later than December 31, 2007, is entitled to receive:

(1) **A NONTRANSFERABLE PAYMENT FROM THE COMMISSION** in an amount equal to the depth of the well multiplied by \$0.50 for each foot of well depth if, not later than the third anniversary of the date the Commission designates the person as the operator of the well, the person brings the well back into continuous active operation or plugs the well in accordance with Commission rules. **LIMITS ON PAYMENTS:** Please note that the Commission must make payments to operators annually in the same order the Commission determines the operators to be entitled to the payments. The aggregate amount of payments in any state fiscal year (September 1 through August 31) may not exceed \$500,000. An operator may not receive more than one payment under the Orphaned Well Reduction Program for the same well; or cumulative payments in an amount that exceeds the total amount of financial security the operator has filed with the Commission under 16 TAC 3.78 (Statewide Rule 78).

(2) **A NONTRANSFERABLE EXEMPTION FROM THE OIL FIELD CLEANUP REGULATORY FEES** provided by §§81.116 and 81.117 for all future production from the well.

(3) **A NONTRANSFERABLE EXEMPTION FROM SEVERANCE TAXES** for all future production from the well as provided by §202.060, Tax Code. A well is considered to be in continuous active operation for purposes of Subsection (h)(3) if: (1) the well is a producing well and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in the records of the Commission and as authorized by a permit issued by the Commission; or (2) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission.

REQUIREMENTS TO QUALIFY FOR TAX EXEMPTION: Under §202.060, Texas Tax Code, relating to Exemption for Oil and Gas From Reactivated Orphaned Wells, the hydrocarbons produced from the well identified in the certificate qualify for a severance tax exemption. In order to qualify for this tax exemption, the person responsible for paying the tax must apply to the Texas Comptroller of Public Accounts (Comptroller). The application must include a copy of the certificate issued by the Railroad Commission. The Comptroller may require a person applying for the tax exemption to provide any relevant information necessary to administer this section. The Comptroller may establish procedures to comply with this section. The exemption takes effect on the first day of the month following the month in which the Comptroller approves the application. The exemption is non-transferable. If the person to whom this certificate is issued ceases to be the operator of the well as shown by Commission records, the Commission will notify the Comptroller. The exemption expires on the date the Comptroller receives the notice. A person who makes or subscribes an application, report, or other document and submits it to the Commission to form the basis for an application for a tax exemption under this section, knowing that the application, report, or other document is untrue in a material fact, is subject to the penalties imposed by Chapters 85 and 91 of the Texas Natural Resources Code. A person is liable to the state for a civil penalty if the person applies or attempts to apply the tax exemption authorized by this section for a well after the person to whom the certificate for the well was issued ceases to be the operator of the well as shown by Commission records.

RAILROAD COMMISSION OF TEXAS Oil and Gas Division	APPLICATION FOR PAYMENT FOR REACTIVATING OR PLUGGING AN ORPHANED OIL OR GAS WELL SEE INSTRUCTIONS ON REVERSE SIDE	FORM OW-3 EFF. 04-2006
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1. Operator name (exactly as shown on P-5 Organization Report) OR Surface Estate Owner Name:		2. Operator P-5 No. (if applicable):	
3. Operator OR Surface Estate Owner address (including city, state, and zip code):		4. Phone No.:	
5. Field Name:	6. Field No.:	7. County:	
8. Lease Name	9. Lease No./Gas ID No.:	10. Well No.:	11. API No.: 42-

OPERATOR REQUEST FOR PAYMENT

I hereby request payment in accordance with Tex. Nat. Res. Code, §89.047, Orphan Well Reduction Program.

☐ I was designated as the operator of the above-listed orphan well. [ATTACH a copy of the Commission's Certificate of Designation as Operator of Orphaned Oil or Gas Wells (approved Form OW-2), for the subject well.]

☐ I have plugged the orphaned well in accordance with Commission's rules. [ATTACH a copy of Form W-3, Plugging Record, for the subject well.]

☐ I have brought the well back into continuous active operation by:

☐ producing well and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission. ATTACH documentation.

OR

☐ using the well as a service well for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three (3) consecutive months as shown in Commission records and as authorized by a permit issued by the Commission. [ATTACH a copy of Form H-10 or other information demonstrating use of the well as a service well for at least three (3) consecutive months.]

SURFACE ESTATE OWNER REQUEST FOR PAYMENT

I hereby request payment in accordance with Tex. Nat. Res. Code, §89.048, Plugging of a Well by Surface Estate Owner.

☐ The above-listed well has been plugged by a Commission-approved plugger in accordance with Commission rules. [ATTACH a copy of the Form W-3 and documentation of the cost of the well-plugging operation.]

CERTIFICATION: I declare under penalties in §91.143, Tex. Nat. Res. Code, that I am authorized to file this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated therein are true, correct and complete to the best of my knowledge.

Name of Representative (Print)		Signature of Representative		Date (mm/dd/yy)	
R R C U S E O N L Y	PAYMENT TO OPERATOR OF AN ORPHANED WELL			PAYMENT TO SURFACE ESTATE OWNER FOR PLUGGING ORPHANED WELL	
	Total Depth of the Well: _____ Feet			Total Depth of Well: _____ Feet	
	Total Financial Security: \$ _____			Average cost of plugging last 24 months: \$ _____	
	Total Previous Payments: \$ _____				
	PAYMENT: \$ _____			PAYMENT: \$ _____	
APPROVED BY: _____ DATE: _____					

INSTRUCTIONS
FORM OW-3
APPLICATION FOR PAYMENT FOR REACTIVATING OR PLUGGING AN ORPHANED OIL OR GAS WELL
EFF. 04-2006

Through House Bill 2161, the 79th Texas Legislature (2005) created two programs to encourage the plugging or re-activation of "Orphaned Wells," which are defined as wells issued a permit by Commission with no reported production or activity for the preceding twelve months and whose designated operator's organization report has lapsed. One program provides for "adoption" of such wells by oil and gas operators (the Orphaned Well Reduction Program). The second program provides for payments to surface owners who contract with Commission-approved pluggers to plug orphaned wells on their surface estate.

OPERATORS - ORPHANED WELL REDUCTION PROGRAM

Under HB 2161, Tex. Nat. Res. Code, §89.047, relating to Orphaned Well Reduction Program, establishes procedures, requirements, and incentives for a person to assume operatorship and regulatory responsibility for an orphaned oil or gas well. If the operator is designated as the operator of the orphaned well, in addition to certain tax exemptions, the operator also may be entitled to a payment of 50 cents per foot of well depth if the operator plugs the well or brings the well back into continuous service (produces 10 barrels of oil or 100 mcf of gas for at least three consecutive months.)

ELIGIBILITY: In order for an operator to receive payment under the Orphan Well Reduction Program, the operator and the adopted orphan well must meet certain eligibility requirements:

(1) The operator must have been designated the operator of the orphaned well on or after January 1, 2006, and on or before December 31, 2007, in order to be entitled to receive the payment under the Orphan Well Reduction Program.

(2) A well is considered to be in continuous active operation for purposes of payment if:

(a) the well is a producing well (a well classified by the Commission as an oil or gas well in accordance with Commission rules) and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission; or

(b) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in Commission records and as authorized by a permit issued by the Commission. "Service well" means a well for which the Commission has issued a permit that is not a producing well. The term includes an injection, disposal, or brine mining well.

WHERE AND WHAT TO FILE: File FORM OW-3 and all required attachments with:

Field Operations
Oil and Gas Division
Railroad Commission of Texas
P. O. Box 12967
Austin, Texas 78711-2967

LIMITS ON PAYMENTS: Please note that in accordance with §89.047, Tex. Nat. Res. Code, the Commission must make payments to operators annually in the same order the Commission determines the operators to be entitled to the payments. The aggregate amount of payments in any state fiscal year (September 1 through August 31) may not exceed \$500,000. An operator may not receive more than one payment for the same well; or cumulative payments in an amount that exceeds the total amount of financial security the operator has filed with the Commission under 16 TAC §3.78. In addition, the payment is nontransferable; therefore, the Commission may make the payment ONLY to the operator who was designated as the operator of the orphaned well.

PLUGGING OF AN ORPHANED WELL - SURFACE ESTATE OWNER

Under HB 2161, if an orphaned well were plugged by a plugger under contract to the surface owner, the Commission may use funds from the Oil Field Cleanup Fund to reimburse the surface owner for those plugging costs in an amount not to exceed 50% of the lesser of actual costs or the average cost incurred by Commission in the preceding 24 months in plugging similar wells. Under Section 89.048, Tex. Nat. Res. Code, the owner of an interest in the surface estate of a tract of land on which an orphaned well is located may contract with a Commission-approved well plugger to plug the well.

If the surface estate owner enters into a plugging contract under §89.048, the well plugger must:

(1) not later than the 30th day before the date the well is plugged, mail notice of its intent to plug the well to the operator of the well at the operator's address as shown by the records of Commission;

(2) assume responsibility for the physical operation and control of the well as shown by a form the person files with the Commission and the Commission approves;

(3) file a bond, letter of credit, or cash deposit covering the well as required by §91.107; and

(4) plug the well in accordance with Commission rules in effect at the time of plugging.

On successful plugging of the well by the well plugger, the surface estate owner may submit documentation to the Commission of the cost of the well-plugging operation. The Commission will reimburse the surface estate owner from money in the Oil Field Cleanup Fund in an amount not to exceed 50 percent of the lesser of:

(1) the documented well-plugging costs; or

(2) the average cost incurred by the Commission in the preceding 24 months in plugging similar wells located in the same general area.

A list of Commission-approved cementers (pluggers) can be found on the Commission's web page at http://www.rrc.state.tx.us/divisions/og/environmental_protect.html under Field Operations - Well Plugging. This list is updated periodically. Or, you may contact the appropriate Railroad Commission District Office.

Issued in Austin, Texas, on March 14, 2006.

TRD-200601678

Mary Ross McDonald

Managing Director

Railroad Commission of Texas

Filed: March 16, 2006



Workforce Solutions Brazos Valley

Request for Applications/Public Notice

The Workforce Solutions Brazos Valley Board (WSBVB) is soliciting applications for Workforce Skills Enhancement Training Projects. This initiative is designed to assist employers develop and implement incumbent worker training programs customized to their needs in the seven counties comprising the WSBVB Area (Brazos, Grimes, Washington, Burleson, Robertson, Madison, and Leon).

The Request for Applications (RFA) contains the necessary background, requirements, instructions, and information necessary to prepare an application for the requested training. RFA #06-101 can

be downloaded from: www.bvjobs.org under Workforce Board - Procurements or by contacting:

Workforce Solutions Brazos Valley Board

Attn: Workforce Skills Enhancement Training Projects RFA

P. O. Box 4128

Bryan, Texas 77805

Physical Address:

3991 E. 29th Street

Bryan, TX

Phone: (979) 595-2800

TRD-200601728

Tom Wilkinson

Executive Director

Workforce Solutions Brazos Valley

Filed: March 21, 2006



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the *TAC*: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).